# OFFICIAL RECORD OF PROCEEDINGS

立法局會議過程正式紀錄

# Wednesday, 26 June 1996

一九九六年六月二十六日星期三

# The Council met at half-past Two o'clock

下午二時三十分會議開始

## MEMBERS PRESENT

出席議員:

### THE PRESIDENT

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P. 主席黃宏發議員, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P. 李鵬飛議員, C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P. 周梁淑怡議員,O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P. 李柱銘議員, Q.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB), J.P.

李國寶議員, O.B.E., LL.D. (CANTAB), J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P. 倪少傑議員,O.B.E., J.P.

THE HONOURABLE SZETO WAH

司徒華議員

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P. 劉皇發議員,O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P. 何承天議員,O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P. 夏佳理議員,O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P. 劉健儀議員,O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P. 梁智鴻議員,O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP 陳 偉 業 議 員

THE HONOURABLE CHEUNG MAN-KWONG 張文光議員

THE HONOURABLE CHIM PUI-CHUNG 詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE 馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA 何敏嘉議員

DR THE HONOURABLE HUANG CHEN-YA, M.B.E. 黃震遐議員,M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

劉慧卿議員

### THE HONOURABLE LEE WING-TAT

李永達議員

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

李家祥議員, O.B.E., J.P.

### THE HONOURABLE FRED LI WAH-MING

李華明議員

THE HONOURABLE HENRY TANG YING-YEN, J.P.

唐英年議員,J.P.

### THE HONOURABLE JAMES TO KUN-SUN

涂謹申議員

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., J.P.

黃秉槐議員, M.B.E., F.Eng., J.P.

### DR THE HONOURABLE PHILIP WONG YU-HONG

黄宜弘議員

## DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員,J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黄偉腎議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

田北俊議員, O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN 李卓人議員

THE HONOURABLE CHAN KAM-LAM 陳鑑 林議員

THE HONOURABLE CHAN WING-CHAN 陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN 陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO 鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN 鄭明訓議員

THE HONOURABLE CHENG YIU-TONG 鄭耀棠議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG 張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG 張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P. 蔡根培議員,J.P.

THE HONOURABLE DAVID CHU YU-LIN 朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

## THE HONOURABLE IP KWOK-HIM

葉國謙議員

### THE HONOURABLE LAU CHIN-SHEK

劉千石議員

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

劉漢銓議員, J.P.

### DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

## THE HONOURABLE LAW CHI-KWONG

羅致光議員

## THE HONOURABLE LEE KAI-MING

李啟明議員

### THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

## THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

### THE HONOURABLE LO SUK-CHING

羅叔清議員

## THE HONOURABLE MOK YING-FAN

莫應帆議員

## THE HONOURABLE MARGARET NG

吳靄儀議員

## THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

## THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

### THE HONOURABLE TSANG KIN-SHING

曾健成議員

### DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E., I.S.O., J.P.

黃錢其濂議員, C.B.E., I.S.O., J.P.

### THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

## PUBLIC OFFICERS ATTENDING

## 出席公職人員:

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P. CHIEF SECRETARY

行政局議員布政司陳方安生女士, C.B.E., J.P.

# THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P. FINANCIAL SECRETARY

行政局議員財政司曾蔭權先生, O.B.E., J.P.

# THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P. ATTORNEY GENERAL

行政局議員律政司馬富善先生, C.M.G., J.P.

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.

### SECRETARY FOR HOME AFFAIRS

政務司孫明揚先生, C.B.E., J.P.

MR NICHOLAS NG WING-FUI, J.P. SECRETARY FOR CONSTITUTIONAL AFFAIRS 憲制事務司吳榮奎先生, J.P.

MR DOMINIC WONG SHING-WAH, O.B.E., J.P. SECRETARY FOR HOUSING 房屋司黃星華先生, O.B.E., J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P. SECRETARY FOR HEALTH AND WELFARE 衞生福利司霍羅兆貞女士, O.B.E., J.P.

MR JOSEPH WONG WING-PING, J.P. SECRETARY FOR EDUCATION AND MANPOWER 教育統籌司王永平先生,J.P.

MR PETER LAI HING-LING, J.P. SECRETARY FOR SECURITY 保安司黎慶寧先生, J.P.

MISS DENISE YUE CHUNG-YEE, J.P. SECRETARY FOR TRADE AND INDUSTRY 工商司俞宗怡女士,J.P.

MR BOWEN LEUNG PO-WING, J.P. SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS 規劃環境地政司梁寶榮先生, J.P.

MR KWONG KI-CHI, J.P. SECRETARY FOR THE TREASURY 庫務司鄺其志先生, J.P.

MR STEPHEN IP SHU-KWAN, J.P.

## SECRETARY FOR ECONOMIC SERVICES

經濟司葉樹堃先生, J.P.

MR KWONG HON-SANG, J.P. SECRETARY FOR WORKS 工務司鄺漢生先生, J.P.

MR PAUL LEUNG SAI-WAH, J.P. SECRETARY FOR TRANSPORT 運輸司梁世華先生, J.P.

## **CLERKS IN ATTENDANCE**

列席秘書:

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL 秘書長馮載祥先生

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL 副秘書長羅錦生先生

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL 助理秘書長吳文華女士

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL 助理秘書長陳欽茂先生

# **PAPERS**

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subject	
Subsidiary Legislation	L.N. No.
Specification of Arrangements (Government of the Republic of Korea Concerning Air Services)  (Double Taxation) Order	248/96
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 1996	257/96
Specification of Public Office	258/96
Official Languages (Authentic Chinese Text) (Prevention of Cruelty to Animals Ordinance) Order	(C) 61/96
Official Languages (Authentic Chinese Text) (Marine Insurance Ordinance) Order	(C) 62/96
Schedule of Routes (New Lantao Bus Company) Order 1996	259/96
Registration of Persons (Amendment) (No. 2) Regulation 1996	260/96
Telecommunication (APSTAR-IA) (Exemption from Licensing) Order	261/96
Road Traffic (Safety Equipment) (Amendment) Regulation 1996	262/96

Official Languages (Alteration of Text) (Public Officers (Assignment of Emoluments) Ordinance)	262/06
Order 1996	263/96
Sai Kung West Country Park (Wan Tsai Extension) (Designation) Order 1996	264/96
Antiquities and Monuments (Declaration of Historical Building) (No. 2) Notice 1996	265/96
Road Traffic (Amendment) Ordinance 1996 (13 of 1996) (Commencement) Notice 1996	266/96
Employees' Compensation (Amendment) Ordinance 1996 (36 of 1996) (Commencement) Notice 1996	267/96
Official Languages (Authentic Chinese Text) (Hang Lung Bank (Acquisition) Ordinance) Order	(C) 63/96
Official Languages (Authentic Chinese Text) (Electricity Networks (Statutory Easements) Ordinance) Order	(C) 64/96
Official Languages (Authentic Chinese Text) (Public Officers (Assignment of Emoluments) Ordinance) Order	(C) 65/96
Official Languages (Authentic Chinese Text) (Overseas Trust Bank (Acquisition) Ordinance) Order	(C) 66/96
Official Languages (Authentic Chinese Text) (Basel Evangelical Missionary Society Incorporation Ordinance) Order	(C) 67/96

Official Languages (Authentic Chinese Text)  (Dominian Missions Ordinana) Order	(C) 69/06
(Dominican Missions Ordinance) Order	(C) 68/96
Gas Safety (Gasholders Examination) Regulation	268/96
Dangerous Goods (General) (Amendment) Regulation 1996	269/96
Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 1996	270/96
Mining (General) (Amendment) Regulation 1996	271/96
Mines (Safety) (Amendment) Regulation 1996	272/96
Public Cemeteries (Urban Council) (Amendment) Bylaw 1996	273/96
Food Business (Urban Council) (Amendment) Bylaw 1996	274/96
Abattoirs (Urban Council) (Amendment) Bylaw 1996	275/96
Slaughterhouses (Urban Council) (Amendment) (No. 2) Bylaw 1996	276/96
Matrimonial Causes (Amendment) Ordinance 1995 (29 of 1995) (Commencement) Notice 1996	277/96
Matrimonial Causes (Amendment) Rules 1996 (L.N. 172 of 1996) (Commencement) Notice 1996	278/96
Matrimonial Causes (Fees) (Amendment) Rules 1996 (L.N. 251 of 1996) (Commencement) Notice 1996	279/96

Official Languages (Authentic Chinese Text) (Aliens (Rights of Property) Ordinance) Order	(C) 69/96
Official Languages (Authentic Chinese Text) (Po Leung Kuk Ordinance) Order	(C) 70/96
Official Languages (Authentic Chinese Text) (Pentecostal Holiness Church Incorporation Ordinance) Order	(C) 71/96
Official Languages (Authentic Chinese Text) (Hong Kong Christian Council Incorporation Ordinance) Order	(C) 72/96
Official Languages (Authentic Chinese Text) (Director of Social Welfare Incorporation Ordinance) Order	(C) 73/96
Official Languages (Authentic Chinese Text) (The St. Stephen's Girls' College Council Incorporation Ordinance) Order	(C) 74/96
Official Languages (Authentic Chinese Text) (Public Order Ordinance) Order	(C) 75/96
文件	
下列文件乃根據《會議常規》第 14(2)條的規定而正式提交:	
項目	
附屬法例	<i>全公告編號</i>
《安排指明(大韓民國政府關於民用航空服務) (雙重課稅)令》	248/96

《1996年僱員再培訓條例(修訂附表 2) (第 2 號)公告》	257/96
《公職指定》	258/96
《法定語文(中文真確本) (防止殘酷對待動物條例)令》	(C) 61/96
《法定語文(中文真確本) (海上保險條例)令》	(C) 62/96
《1996年路綫表(新大嶼山巴士公司)令》	259/96
《1996年人事登記(修訂)(第2號)規例》	260/96
《電訊(亞太衞星 IA)(豁免領牌)令》	261/96
《1996年道路交通(安全裝備)(修訂)規例》	262/96
《1996年法定語文(修改文本)(公職人員 (轉付薪酬)條例)令》	263/96
《1996年西貢西郊野公園(灣仔擴建部分) (指定)令》	264/96
《1996年古物及古蹟(歷史建築物的宣布) (第2號)公告》	265/96
《1996年道路交通(修訂)條例(1996年第13號) 1996年(生效日期)公告》	266/96
《1996年僱員補償(修訂)條例(1996年第36號) 1996年(生效日期)公告》	267/96
《法定語文(中文真確本) (恒隆銀行(接收)條例)令》	(C) 63/96

《法定語文(中文真確本)(供電網路(法定地役權)條例)令》	(C) 64/96
《法定語文(中文真確本)(公職人員(轉付薪酬)條例)令》	(C) 65/96
《法定語文(中文真確本)(海外信託銀行 (接收)條例)令》	(C) 66/96
《法定語文(中文真確本) (巴色差會法團條例)令》	(C) 67/96
《法定語文(中文真確本) (道明會條例)令》	(C) 68/96
《氣體安全(儲氣鼓檢驗)規例》	268/96
《1996年危險品(一般)(修訂)規例》	269/96
《1996年危險品(政府爆炸品倉庫) (修訂)規例》	270/96
《1996年鑛務(一般)(修訂)規例》	271/96
《1996年鑛場(安全)(修訂)規例》	272/96
《1996年公眾墳場(市政局)(修訂)附例》	273/96
《1996年食物業(市政局)(修訂)附例》	274/96
《1996年屠場(市政局)(修訂)附例》	275/96
《1996年屠房(市政局)(修訂) (第2號)附例》	276/96
《1995年婚姻訴訟(修訂)條例(1995年第 29 號) 1996年(生效日期)公告》	277/96

《1996年婚姻訴訟(修訂)規則 (1996年第 172號法律公告) 1996年(生效日期)公告》	278/96
《1996年婚姻訴訟(費用)(修訂)規則 (1996年第251號法律公告) 1996年(生效日期)公告》	279/96
《法定語文(中文真確本)(外國人(財產權利)條例)令》	(C) 69/96
《法定語文(中文真確本) (保良局條例)令》	(C) 70/96
《法定語文(中文真確本) (五旬節聖潔會法團條例)令》	(C) 71/96
《法定語文(中文真確本) (香港基督教協進會法團條例)令》	(C) 72/96
《法定語文(中文真確本) (社會福利署署長法團條例)令》	(C) 73/96
《法定語文(中文真確本) (聖士提反女子中學校董會法團條例)令》	(C) 74/96
《法定語文(中文真確本)(公安條例)令》	(C) 75/96

## Sessional Papers 1995-96

- No. 87 Report of changes to the approved Estimates of
  Expenditure approved during the final quarter of 1995-96
  Public Finance Ordinance: Section 8
- No. 88 Director of Social Welfare Incorporated Statement of Accounts for the year ended 31 March 1995

- No. 89 Report by Commissioner of Correctional Services on the Administration of the Correctional Services Department Welfare Fund for the year ended 31 March 1995
- No. 90 1995 Annual Report by the Commissioner of the Independent Commission Against Corruption
- No. 91 Report on the Administration of the Fire Services Welfare Fund for the year ended 31 March 1995
- No. 92 1995 Annual Report of the Independent Commission Against Corruption Complaints Committee

## 一九九五至九六年度會期內提交的文件

- 第 87 號 一九九五至九六年度最後一季 獲批准對已核准的開支預算作出更改的報告 公共財政條例:第 8 條
- 第 88 號 一 社會福利署署長法團 截至一九九五年三月三十一日止的 資產負債表
- 第 89 號 懲教署署長就懲教署福利基金 在截至一九九五年三月三十一日止 一年內的管理情況提交的報告
- 第 90 號 總督特派廉政專員 一九九五年年報
- 第 91 號 一 截至一九九五年三月三十一日的 消防處福利基金管理報告
- 第 92 號 廉政公署事宜投訴委員會 一九九五年年報

### Miscellaneous

Supplementary Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights

## 雜項

大不列顛及北愛爾蘭聯合王國根據公民權利和政治權利國際公約提交 有關香港的補充報告

#### Addresses

**PRESIDENT**: May I remind Members again that under Standing Order 14(5), no debate may arise on the addresses, but I may permit short questions seeking elucidation on matters raised in the addresses.

# 1995 Annual Report by the Commissioner of the Independent Commission Against Corruption

MR ARCULLI RONALD: Mr President, as a member of the Advisory Committee on Corruption, I have pleasure in introducing the 1995 Annual Report by the Commissioner of the Independent Commission Against Corruption (ICAC), which is tabled today in this Council.

February 1995 marked the 21st anniversary of the ICAC; the coming of age of an organization which has had such a profound and positive effect on the lives of Hong Kong citizens. During the landmark year, the Commission, supported by the Administration, sought to implement the recommendations of the ICAC Review Committee Report relating to the Commission's structure, powers and accountability. The recommendations that could be implemented administratively have already been incorporated into the Commission's practice. Those that required statutory amendments — mainly the transfer of certain

powers to the courts — were at year's end still being considered by this Council. The Commission is confident that the proposed amendments will further enhance the Commission's transparency and accountability without adversely affecting its investigative effectiveness and efficiency.

The number of corruption reports made to the ICAC reached a peak in 1993 and 1994, but in 1995 there was a levelling off with a 10% decline. There is no ground for complacency and the Commission remains vigilant in its fight against corruption.

In 1995, a survey showed that 98% of Hong Kong people supported the work of the ICAC. This was very reassuring to the Commission. Public confidence is reflected in the willingness of complainants to identify themselves and, as a result, during the past three years, two thirds of the complaints received were capable of investigation.

The Legislative Council election in September 1995 involved each area of the Commission in different ways: advising candidates and electors on the provisions of the Corrupt and Illegal Practices Ordinance; participating in the review of the elections after they had been held; and receiving and investigating allegations of offences relating to the elections. 247 reports of alleged breaches were received.

During the year, the ICAC gave full support to the Commissioner of Police and his senior management in their ongoing anti-corruption drive. This was done mainly through the Police/ICAC Operational Liaison Group, the Force Anti-Corruption Strategy Steering Committee and the Police Corruption Prevention Group; on all three bodies, the Commission is represented by senior officers.

Public education on the evils of corruption and enlisting support for the Commission continued their momentum in 1995. The Campaign on Business Ethics, introduced in 1994, seeks to encourage all chambers of commerce, trade associations, listed and major companies, to formulate a code of conduct. By year end, over 60% of these organizations had formulated a code; another 27% were in the process of doing so. As the promotion of business ethics is a long-term commitment, the Hong Kong Ethics Development Centre was set up in May 1995 under the auspices of the ICAC. Its work is guided by an advisory

committee, comprising representatives from six major chambers of commerce. Simultaneously, a Support Clean Government programme began, with the support of the Civil Service Branch. In phase one, a practical guide on corruption prevention was distributed to 4 500 senior managers, followed up by seminars.

In tabling this report, the last produced by Mr Bertrand de SPEVILLE, I would like to record our appreciation of his fine leadership during his three years as Commissioner. I would also like to join him in thanking the members of the various ICAC advisory committees for their valuable work and support during the year and all the Commission staff for their loyalty, dedication and efficiency.

# 1995 Annual Report of the Independent Commission Against Corruption Complaints Committee

**MR ALLEN LEE**: Mr President, on behalf of the ICAC Complaints Committee, I present the 1995 Annual Report of the Committee to this Council.

One of the recommendations of the ICAC Review Committee is that all the committees of the ICAC should submit annual reports to the Governor which should be published. The aim is to keep the community informed of their work.

This is the Committee's first annual report published by itself. Previously, the ICAC annual reports included a brief section on the work of the Committee. With this small booklet, the Committee introduces itself, its operation, and the work carried out in the past year.

Any comments on the report may be directed to the Secretary of the Committee.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT:** I have given permission for Dr LEONG Che-hung to ask a question of a notional character and which relates to a matter of public importance. I am satisfied that sufficient private notice has been given to the Government to enable the question to be answered. Dr LEONG Che-hung please ask your question.

## Chief Secretary's Visit to North America

**DR LEONG CHE-HUNG** asked: Will the Chief Secretary give a full account to this Council of her recent visit to North America?

**CHIEF SECRETARY**: Mr President, my recent visit to the United States covered seven cities. I visited Seattle, San Francisco and Boston before launching a major Hong Kong promotion in New York, Dallas and Los Angeles. My last stop was Washington DC.

The objectives of the visit were firstly, to promote business ties between Hong Kong and the United States; secondly, to enhance cultural links; thirdly, to increase understanding of and discuss concerns about, the transitional arrangements and recent developments in Hong Kong; and fourthly, to follow up on the Governor's earlier visit to Washington to lobby for unconditional Most Favoured Nation (MFN) extension for China.

In Seattle, San Francisco and Boston, I met with government leaders, local businessmen, and academics. Specifically, I spoke at Stanford University, Harvard University and Massachusetts Institute of Technology on Hong Kong's transition.

New York was the first leg of the Hong Kong-United States 1996 promotion. This was my fourth major overseas promotion. Since 1993, similar promotions have been organized in Europe, in the United States and in Japan.

The key element in the promotion was the business conference held in New York, Dallas and Los Angeles organized with customary efficiency by the Hong Kong Trade Development Council. Entitled "Hong Kong — Strategic Business Partner for the Pacific Century", the conference featured top Hong Kong businessmen and senior government officials as speakers. I also delivered a keynote speech at each of the three conference luncheons. In addition, there were workshops on financial services, high-tech manufacturing and tourism in Hong Kong.

Other promotion-related activities included gala dinners, receptions, fashion shows featuring the work of Hong Kong designers, film festivals, concerts by the Urban Council's Hong Kong Chinese Orchestra, the Hong Kong Tourist Association's "Hong Kong Wonders Never Cease" promotion and a HK TVB variety show featuring some of Hong Kong's top singers at the Universal City Walk in Hollywood, which was broadcast in Hong Kong and through cable network in the United States. I also spoke to academics at the University of California in Los Angeles.

Concluding my United States tour, I visited Washington DC where I held meetings with senior officials of the United States Administration including Secretary of State, Warren CHRISTOPHER, Secretary for the Treasury, Robert RUBIN and the National Security Adviser, Anthony LAKE. I also met with key members of both the House and the Senate including the Chairman of the Senate Finance Committee, William ROTH, Chairman of the House Asia and Pacific Subcommittee, Doug BEREUTER and the newly elected Senate Majority Leader, Trent LOTT. My purpose was to emphasize the importance to Hong Kong of unconditional MFN renewal for China, to discuss the prospects of permanent MFN, to stress our commitment to the protection of intellectual property rights and to explain how we were preparing for the transition and some of the challenges ahead.

Over a period of three weeks, I delivered 26 speeches and held numerous meetings with United States Government officials, local government leaders, politicians, chambers of commerce, business associations and community organizations which have a particular interest in Hong Kong. On the media side, I held six press conferences, and gave eight media interviews and met with seven editorial boards. We also published a special Hong Kong supplement in each of the three cities covered by the promotion. All our promotion events received extensive coverage in the media and were very well attended.

The visit was well worthwhile and, I believe, met all of the objectives which I referred to earlier. The active participation of members from both the public and private sectors in the promotion enabled us to make a far greater impact on our American audiences than either party could achieve on its own. Together, we were able to underline Hong Kong's strategic role in the Asia Pacific region, our economic strength and generally to instil confidence in continued investments in Hong Kong after 1997.

It is clear that there is continuing strong interest in Hong Kong and considerable support for everything that we are doing to secure our future. I stressed the United States's increasing stakes in Hong Kong and therefore the importance to the United States of a smooth transition. All my contacts made it clear that they look forward to full and faithful implementation of the Joint Declaration and Basic Law. Inevitably, I was asked to respond to specific concerns over the transition, including the threat of a provisional legislature, protection of human rights, press freedom, and so on. I dealt frankly with these concerns. At the same time, I drew attention to how much had been achieved in the past twelve years since the signing of the Joint Declaration to turn the promises of a "high degree of autonomy" and "Hong Kong people ruling Hong Kong" into a reality. On the whole, I was able to project a reasonably positive picture of Hong Kong's future whilst acknowledging that there were still difficulties which remain to be resolved to ensure that the key elements of Hong Kong's success remain intact after 1997.

**PRESIDENT:** Dr LEONG, do you wish to raise a supplementary?

**DR LEONG CHE-HUNG**: Mr President, there is no doubt that the Chief Secretary has gone through a very tiring yet successful trip on behalf of Hong Kong and I am sure all Members of this Council would join me in thanking her for doing this for us.

In her address, especially in the last paragraph, the Chief Secretary mentioned that she dealt frankly on issues concerning the threat of a provisional legislature, protecting human rights and press freedom. I wonder whether the Chief Secretary could expand on this?

**CHIEF SECRETARY:** Mr President, it is perhaps not surprising to this Council that the main concern raised with me during my tour of the United States was the threat of a provisional legislature to replace the current legislature. I took the opportunity to reiterate the Government's very clear stance on this and I will repeat this now.

The Government's position on the provisional legislature is that we remain opposed to the establishment of a provisional legislature. We consider a provisional legislature to be both unnecessary and unjustified. The current legislature was elected in open and fair elections in September of last year. We had a record turnout of voters at that election. The current legislature clearly enjoys the support of the entire community, and in terms of continuity and confidence within the community, it is clearly desirable for the current legislature to transit 1997 and for Members to be able to serve out their full four-year term.

But perhaps not surprising either, the question was put to me that many people have now asserted that it is inevitable that the provisional legislature would be established and what was the Government's stance on this. I took the opportunity again to restate that if the Chinese insisted on proceeding — and I said at the same time that we were hoping very much to continue to persuade the Chinese not to proceed with a provisional legislature — but if they were determined to do so, then I think it is for the Chinese side to explain to the community in Hong Kong and to the international community exactly how the provisional legislature would conform with the Basic Law and the Joint Declaration and, more importantly, how it would implement the principle of Hong Kong people ruling Hong Kong.

I also made it clear at the same time that this Government is unable to provide any assistance for the establishment of a provisional legislature, nor would this Government do anything to undermine the functioning and credibility of the existing legislature. In this context, we welcomed Mr QIAN Qichen's statement that on this side of 1997, only the Governor, the Privy Council and the current Legislature will exercise power and that there will not be two power centres.

On the question of protection of human rights and press freedom, I went through, in a fair amount of detail, what the Administration has done to ensure that human rights, including press freedom, will be protected after 1997. But at the same time, insofar as press freedom is concerned, I also pointed out that whilst the Government will do its share and remain committed to ensuring that nothing remains on our statute book that in any way inhibits press freedom, and that all our laws are fully consistent with the Bill of Rights Ordinance, I did at

the same time point out that of course practitioners in the media, including journalists, reporters and publishers, also have a role to play in defending and upholding the integrity of their profession.

**MR MARTIN LEE:** Mr President, I see that the Chief Secretary told us that she "met with" various people in Washington, instead of "met" various people in Washington. Is it the intention of our Government now to introduce some Americanism into this Chamber to make Hong Kong really an international city?

**PRESIDENT:** I am not sure if Americanism is allowed in this Chamber. Standing Orders read: only Cantonese and English can be used verbally, orally.

**CHIEF SECRETARY:** Mr President, I am not quite sure that the question really requires an answer. Nor am I sure that "met with" is in any way very Americanized.

楊森議員問:主席先生,布政司在以往和今天都有提到港府對臨時立法會的立場,但我們很多同事和市民都關注到,她一方面提到港府不贊成臨時立法會的成立,公務員也不會加以協助;但在外國,她卻說如果臨時立法會成立,就希望它能包括各方面的意見。布政司可否告知我們,政府會否因政治現實要採取立場,其實對臨時立法會的態度已經軟化?

CHIEF SECRETARY: Mr President, could I make it clear that the Government's position on the provisional legislature has not changed and remains as I have stated in my reply to an earlier supplementary question. Of course, when I was in the United States, the question was put to me: If the Chinese insisted on proceeding with a provisional legislature, what will be the concerns? And I think I am reflecting the concerns of the people of Hong Kong, and indeed the concerns of the international investing public, in saying that clearly one of the concerns would be to see in what way, if the provisional legislature is established, it would actually implement the principle of Hong Kong people ruling Hong Kong and in what way it would conform with the requirements of the Basic Law.

**MR HOWARD YOUNG:** Mr President, judging from the Chief Secretary's reply, I think there is still a need to eradicate some confusions over reports and headlines such as "The Chinese Are Disbanding the Current LegCo". I had better ask my question in Cantonese, Mr President.

主席先生,布政司在訪問時有否藉機會澄清有關立法局這問題以及臨時立法會在憲制上的一個很混淆之處?我們常說立法局要過渡九七,但這基本上存有一個憲制問題,因為除非將《英皇制誥》和《皇室訓令》延續超過九七,立法局才可過渡九七。不過,如果說是希望所有立法局議員能夠在九七後的立法機關繼續服務或參與,這就既合情、合法又合理,也可避免在憲制上出現混淆。請問她有否在討論時或與有關人士會面時澄清這點?

**CHIEF SECRETARY:** Mr President, the constitutional position of the current Legislative Council is abundantly clear and I do not think requires any further clarification. On the other hand, if questions are asked about the provisional legislature, then I think that is really for the Chinese side to establish its constitutional position. And I repeat what I said in my two replies to the supplementary questions put to me just now.

李永達議員問:主席先生,布政司在美國有關臨時立法會的言論會令香港市 民感到混亂,因為她在香港時,對臨時立法會的態度有一個很清楚的不同意 立場,但她在美國卻說如果中國要成立臨時立法會的話,希望它有各方面的 聲音。請問布政司,這樣說法是否意指即使一個由委任產生,有不同意見的 臨時立法會,就能夠代表香港市民的聲音,以及她可以接受一個由150萬人 在九五年九月選出的立法局可以由透過委任形式產生的立法機關取代?

**CHIEF SECRETARY:** Mr President, could I make it clear that the question of "If there is a provisional legislature" is not a question that I have, as it were, raised on my own. It was a question that was put to me in my numerous contacts with people in the United States and I was attempting to answer that question.

劉慧卿議員問:主席先生,最近中國港澳辦公室主任魯平先生曾接受兩個美

國電視台訪問,這令人想到美國人可能對九七問題有很多擔心和疑慮。請問 布政司,她在美國多個星期中所見到的人,或在美國朝野,又或各方面的人 士,是否都對香港有很多擔心和疑慮,特別是有關自由、法治、民主和貪污 等問題?

**CHIEF SECRETARY:** Mr President, I did indeed encounter the concerns that the Honourable Miss Emily LAU raised just now. I think the chief concern centres broadly around China's commitment to implementing the high degree of autonomy and Hong Kong people ruling Hong Kong after 1997. And specifically, the concerns revolve around continuity in our legislature, China's commitment to protecting human rights, press freedom, and so on.

**PRESIDENT:** Honourable Members, as we have a fairly long agenda today, I will allow around one hour only for the six regular questions for which notice has been given. To enable Members to make more effective use of this one hour and ask as many supplementary questions as possible, Members should keep their supplementary questions short and avoid long preambles and multi-barrelled questions. If Members keep their questions succinct, Public Officers also will find it easier to answer them and provide the information required.

## ORAL ANSWERS TO QUESTIONS

## **Public Interest Immunity Certificates**

- 1. MISS MARGARET NG asked: Mr President, it is learnt that in a recent criminal court case, the Chief Secretary signed two "public interest immunity certificates" claiming that certain documents should not be disclosed on the ground that it was in the interest of the public to protect the identity of the informant concerned. The presiding Judge dealt with the certificates by ordering some of the documents in question to be disclosed, and it was subsequently held that there was no case to answer. In this connection, will the Government inform this Council:
  - (a) who decides that a public interest immunity certificate is necessary

- in any given case; and what guidelines will be taken into consideration before a decision is made to request the Chief Secretary to sign a public interest immunity certificate;
- (b) of the number of public interest immunity certificates signed by the Chief Secretary in the past three years; and
- (c) whether the Chief Secretary has ever refused to sign any public interest immunity certificate in the past three years; and if so, in how many cases?

ATTORNEY GENERAL: Mr President, in the case referred to in the question, the Chief Secretary issued two public interest immunity certificates, the first claiming immunity in relation to 56 documents and the second in relation to 10 documents. After considering the certificates and examining the documents, the Judge ordered disclosure of 14 of the documents covered by the first certificate and one document covered by the second certificate. The Judge's decision that there was no case to answer was unrelated to the content of the documents which were disclosed.

## To answer the specific questions:

- (a) the decision to issue a public interest immunity certificate is that of the Chief Secretary after taking legal advice from the Crown Solicitor. The categories of document in respect of which public interest immunity may be claimed and the procedures for considering and making claims are governed by the common law and also, in civil cases, by rules of court;
- (b) since the beginning of 1993, the Chief Secretary has signed eight public interest immunity certificates (five in criminal proceedings, three in civil proceedings). Two of the cases (one criminal, one civil) have not yet proceeded to trial and the certificates have not therefore been produced;
- (c) during the period referred to in the question, the Chief Secretary has

not refused to sign any public interest immunity certificate.

MISS MARGARET NG: Mr President, would the Attorney General elaborate on the categories referred to in subparagraph (a), particularly in the case referred to in my question? The certificate was issued for the protection of an informer and I understand that protection of informers is one of the categories. My question is: Whether, when it concerns the protection of an informer, the Chief Secretary will categorically issue such a certificate? And in the case I referred to, the particular informer had actually disclosed his identity as an informer to the Court of Appeal. In that case, why did the Chief Secretary still consider it necessary to protect his identity?

*Secondly, with reference to subparagraph (b)* .....

**PRESIDENT**: Miss NG, could we take one supplementary at one time.

**MISS MARGARET NG**: Mr President, may I just explain simply that my question relating to (b) is also with reference to the categories. I just wonder if the Attorney General would tell us what categories these other certificates relate to?

**PRESIDENT**: Please proceed.

**MISS MARGARET NG**: That is all, Mr President, just the five criminal proceedings, three civil proceedings and what are the categories under which the certificates are being issued?

**ATTORNEY GENERAL**: I think I picked up about four supplementaries in that, Mr President. Public interest immunity, rarely claimed, as the figures show, is claimed when it is considered not to be in the public interests that documents

should be produced at trial, whether in civil or criminal proceedings. It is a procedure, as I say, that is very rarely resorted to. The law relating to public interests is, as the Honourable Member knows, developing rapidly. The circumstances giving rise to the issue of a public interest certificate vary enormously from case to case and will have to be considered on the facts of each particular case.

In relation to informers, it is, Mr President, a general principle that it is not in the public interests to disclose documents that reveal the identity of informers, unless to do so would be to prevent a miscarriage of justice. And the reason for that is that disclosure will undermine the confidence of informers in the assurances given to them by the police that their role in the provision of information would be safeguarded.

Let me say, Mr President, a little bit about the circumstances of this case. Before the trial began, prosecuting counsel had disclosed, as was his duty, to defence counsel, copies of the police notebook entries and the file records which revealed that one of the co-conspirators in this case was the informer. Following that disclosure, the defence then requested the prosecution to disclose further information relating to all previous contacts between the informer and the police. The Chief Secretary was advised that if the information contained in the documents was disclosed to the defendants, the safety of the source of information would be put at risk and other potential sources would be discouraged from providing information. Mr President, as you will know, it is an invaluable part of the police operations in the detection and prevention of crime that rely on information provided by informers. The principle to which I have referred is one of very long standing and is part of the common law.

As for the five categories covered in subparagraph (b), as I said, two of the cases have yet to come to trial and I do not think it would be appropriate for me to reveal before trial what is in those public interest immunity certificates. In relation to the remaining six, two of the certificates were produced in relation to this trial. That leaves four. I will consider those certificates and see how much I can properly reveal to the Honourable Member, bearing in mind that in those cases in which the certificates were produced, the Judge in each case upheld the certificate and did not order the disclosure of any of the information or any of the documents contained in them. (Annex I)

**PRESIDENT**: Miss NG, I will return to you after other Members have raised their supplementaries.

**MR MARTIN LEE**: Mr President, I have two; may I ask one first and join the queue later? Is there a convention in Hong Kong that the Attorney General will automatically sign every public interest immunity certificate put before him or her, or is there any discretion ever exercised by the Chief Secretary in the past?

**ATTORNEY GENERAL**: I think Mr LEE was referring to the Chief Secretary in the first part of his supplementary question, not the Attorney General. I should explain, Mr President, that in relation, specifically to criminal proceedings, because the Attorney General is the prosecutor, the Attorney General plays no part in the advice given to the Chief Secretary in relation to public interest immunity certificates, for reasons that will be well understood by the Honourable Member.

The short answer, Mr President, is no. On each occasion, advice is furnished to the Chief Secretary as to what are the documents for which disclosure is sought, advice is furnished as to what is the public interests, the Chief Secretary is invited to read all the documents and to form her own judgment — her own judgment — as to whether or not in the light of the advice supplied, it would be in the public interests to produce the documents or it would be in the public interests not to produce the documents, in which case the Chief Secretary reads all the documents and considers the advice. So it is not an automatic procedure at all.

涂謹申議員問:主席先生,布政司過往簽發這些公眾利益的豁免證明書時, 是否曾就任何案件諮詢過法律顧問或英國的聯邦及外交事務大臣?若然,為 甚麼?同時是在何種情況之下?

**ATTORNEY GENERAL:** Mr President, as I have indicated in my main answer,

the Chief Secretary signs public interest immunity certificates having taken the advice of the Crown Solicitor. It is the Crown Solicitor who provides legal advice to the Chief Secretary. I am not aware of any occasion on which the Crown Solicitor has felt it necessary to approach the Foreign and Commonwealth Affairs Office or any other government official, but I can certainly ask him. As I have explained in relation to an earlier supplementary in relation to criminal proceedings, I play no part in the issue of public interest immunity certificates, but I will certainly double-check with the Crown Solicitor and furnish a written reply. (Annex II)

**MISS MARGARET NG**: As to the answer under (b), I am content to wait for the Attorney General's further information, but for the moment, I wonder if the Attorney General could tell us which categories these certificates fell under; whether they are all relating to informers or whether they involve other kinds of categories?

ATTORNEY GENERAL: Mr President, I think it is self-evident that in relation to civil cases, there will be no certificates relating to informers. It is unusual to have informers in civil cases. In relation to the criminal cases, as I have said already, two of the certificates out of the five were produced in this case, and we know what happened there. One case has yet to go to trial. That leaves two. I will have to make enquiries. But I would wish to stress the point that I have made already and, that is, that public interest immunity does not readily lend itself to categorization and I would not want the Honourable Member to think that one can assign particular meanings to particular categories. As I have said, I will endeavour to find out and provide a written reply.

**MR MARTIN LEE**: Mr President, has any Chief Secretary ever in the past refused to sign any public interest immunity certificate, either in civil or criminal cases? And if yes, how many?

**PRESIDENT**: Mr LEE, I think it is only reasonable to impose a time limit or else there will be no end to the research efforts.

**MR MARTIN LEE:** Perhaps within the memory of the Attorney General, is he aware of any instance in the past where any Chief Secretary has refused to sign any public interest immunity certificate?

ATTORNEY GENERAL: I am relieved, Mr President, that Mr LEE has reduced the timeframe from about 150 years to 28; not that that will make the task very much easier. I will have to see what I can come up with. I should add, Mr President, that prior to 1992 when we started keeping central records of public interest immunity certificates, the certificates were placed on file. I will have to see whether the task of going through many hundreds of civil and criminal litigation files will be justified to produce the information sought, but once again, I will do my best.(Annex III)

**MR MARTIN LEE**: I do not want him to rush to do it, he can have the summer vacation to do it.

PRESIDENT: 1 July 1997.

涂謹申議員問:當政府與訟的一方,需要要求布政司簽發這些證書時,例如 在民事案件中,有關部門是由那個層次的檢察官去提出這項要求,而在刑事方 面,是否由例如刑事檢控專員的層次官員才會提出這項要求?

**ATTORNEY GENERAL**: Mr President, I thought I had made it clear that the legal advice was provided by the Crown Solicitor both in civil and criminal proceedings, and it is the Crown Solicitor personally who considers the documents for which production is sought and furnishes the advice.

Mr President, I do not want to prolong it, but I do want to emphasize one point which I hope comes out from this answer and, that is, that the ultimate arbiter, the ultimate determinant of whether or not documents are properly covered by a public interest immunity does not rest with the Government, does not rest with the Chief Secretary, it rests with the courts. It is for the courts, ultimately, to decide whether or not it is in the public interests for documents to be produced. I thought I would re-emphasize that point, Mr President.

**PRESIDENT**: Mr TO, are you claiming that your question has not been answered?

涂謹申議員問: 主席先生, 我相信律政司是誤會了我的質詢。主要答覆的(a) 部分是說, 布政司在.....

**PRESIDENT**: Could you do it succinctly please, you do not need to elaborate your question.

涂謹申議員問:我相信律政司是誤會了我的質詢。我的質詢是布政司在聽取 民事檢控專員的法律意見之前,必先有一個政府部門,民事的案件可能是民 事的部門,而刑事案件則是刑事案件的部門;而這兩個部門分別去提出要求 布政司簽發證書時,是由哪個層次的官員將要求呈交布政司,然後布政司才 考慮民事檢控專員的意見而作決定?

ATTORNEY GENERAL: Mr President, it does not work that way. In relation to criminal proceedings, in the light of the law that has evolved in the last five years, it is the duty of the prosecution to make available to the defence all unused material. And some Honourable Members will know that that encompasses all material the prosecution has available, including material that they do not intend to rely on at the trial. Because it is important that questions of public interest immunity are not taken by those who are prosecuting, there is a Standing Instruction from the Director of Public Prosecutions that if any question arises as to whether or not documents should be made available to the defence, that advice should be sought by the Crown Solicitor. He will then examine the documents and form his own judgment as to whether or not a case for public interest immunity certificate arises. If he does so conclude then he will advise the Chief Secretary, and that is how the procedure works.

In relation to civil proceedings, as I have said in my main answer, the

procedure is governed by Rules of the Supreme Court, and also by Standing Instructions, General Regulations, issued to all civil servants about the procedures to be followed when claims for public interest immunity certificates are to be sought in civil proceedings.

# **Rental and Service Contracts Signed by Persons under 18**

2. 羅叔清議員問:青少年學童使用傳呼機的情況日漸普遍,引起學校及家長的擔憂。有見及此,政府可否告知本局,現時有否向傳呼公司發出指引,要求這類公司與未滿 18 歲的人士簽訂有關租賃及服務合約,須得到該等人士的家長或監護人副署同意;若否,會否考慮制訂有關指引?

經濟司答:主席先生,《電訊條例》及傳呼服務經營牌照,均無條文規定傳呼服務營辦商在與18歲以下人士簽訂租賃或服務合約時,須獲該等人士的父母或監護人副署同意。然而,電訊管理局局長知悉公眾對未成年人士使用傳呼機服務感到關注,因此,最近向所有傳呼服務營辦商發出傳閱函件,呼籲營辦商規定與未成年人士簽訂服務合約時,必須由該等人士的父母或監護人副署同意。目前,傳呼服務營辦商正認真考慮這項建議。有些主要營辦商已改變方針,以配合我們的建議,亦有個別營辦商早已訂明副署規定。

羅叔清議員問:我很高興政府這麼快就有回應。請問政府日後如何進行監管,使指引或建議得以落實?

經濟司答:主席先生,我們這份函件是最近發出的,我剛才也提到,個別營辦商已經非常合作,我想這是因為自律的問題。如果以市場計,這些營辦商可說已佔了市場的三分之一。我們當然會繼續留意情況,看看問題有否轉趨嚴重,以及這些傳呼服務營辦商有否根據函件來做事。

張炳良議員問:主席先生,雖然政府沒有法例規定未滿18歲的青少年必須得到家長或監護人副署有關合約,但剛才經濟司說已經發出了函件。我想問一問經濟司,根據政府現時所掌握的資料,目前18歲以下人士取得傳呼機究竟會造成甚麼具體弊處或惡果,令政府在勸告營辦商時,能更有力指出有關問題?

經濟司答:主席先生,最近我們曾收到一些立法局議員轉給我們的投訴,傳媒最近也有報道這方面的情況。主要來說,大家關注到18歲以下的青少年,有些甚至是十三、四歲的學生,簽署了一些合約,而他們在簽約時可能不明白合約所附帶的責任,例如有些可能規定必須繳交六個月的台費,他們可能沒有考慮到自己的經濟能力,是否可以負擔這些台費;有些又可能不很明白合約所附帶的責任。另一方面,傳呼機公司與這些青少年簽署合約,其實也有一定的風險,因為這些合約是由普通法的規定所管限,視乎合約的性質,在某些情形下,這些合約在法律上可能是沒有約束效力的。換言之,傳呼機公司與18歲以下青少年簽訂合約,也有一定的風險,所以我們最近已向這些傳呼機公司作出呼籲。我想對雙方面來說,即青少年及傳呼機公司來說,傳呼機公司應該考慮在與青少年簽訂這類合約時,要求他們的父母或監護人副署同意。

蔡根培議員問:主席先生,政府可否告知本局,教育署有否向學校發出指引,須採取甚麼態度來面對未成年青少年學生使用傳呼機的問題?

**PRESIDENT**: I am afraid this is outside the scope of the original question.

涂謹申議員問:主席先生,電訊管理局發出有關的呼籲文件時,有否考慮到 學校和家長的一些憂慮,即電訊管理局有否向教育統籌事務委員會或青年事 務委員會諮詢,才作出這些行動?同時,有否打算對其他傳播或通訊器材的 使用,作出同樣的呼籲?換句話說,即需要父母的同意才可以簽訂合約呢?

**PRESIDENT**: I am afraid the first part of the supplementary is outside the scope of the original question. The second part, Secretary.

經濟司答:除了傳呼機外,我想議員提及的最普遍通訊器材是指無綫電話。 在這方面,我們事實上不需要作出呼籲,這些無綫電話的營辦商也很聰明, 不會與18歲以下的青少年簽訂合約。原因很簡單,就是他們也擔心青少年是 否有經濟能力支付電話費,因為無綫電話的電話費可能很昂貴。

## Returning Hong Kong Residents with Foreign Nationality

- 3. 涂謹申議員問:主席先生,中國全國人民代表大會常務委員會已通過《中華人民共和國國籍法》於一九九七年七月一日起在香港特別行政區("特別行政區")實施的解釋草案,其中提及擁有外國國籍的香港居民可憑有效證件向特別行政區有關當局申報外國國籍。就此,政府可否告知本局對此安排的立場,及有否要求有關中方官員澄清以下問題:
  - (a) 擁有外國國籍的回流港人若果不申報其外國國籍,是否會被視 為中國公民;若有,中方官員的回應為何;
  - (b) 擁有外國國籍的回流港人在申報其外國國籍之後,是否便可自 動獲得特別行政區永久居民身分,還是需要再經過某些申請或 申報手續,才可獲得永久居民身分;若有,中方官員的回應為 何;
  - (c) 回流港人在申報其外國國籍後,可按甚麼法理依據,獲得特別 行政區永久居民身分,及享有有關的權利和義務,包括政治權 利及如繳納稅項義務等;若有,中方官員的回應為何;及
  - (d) 回流港人在申報其外國國籍後,他們在港出生的子女的國籍及 特別行政區永久居民身分的問題,將如何處理;若有,中方官 員的回應為何?

**保安司答**:主席先生,根據中方頒布的文件(包括全國人民代表大會常務委員會通過的《中國國籍法》解釋文件在內),我們了解中方的立場如下:

第一,在中國領土(包括香港在內)出生的所有華裔香港居民,都被視為中國國民。如果在香港特別行政區的這類人士擁有外國國籍,可申報更改國籍。申報時須向特別行政區政府的入境事務處,提交有效文件。

第二,申報更改國籍獲香港特別行政區的入境事務處批准之後,以往被 視作中國國民的人士,將被視作外國公民。這類人士如欲取得香港特 別行政區的居留權,必須符合《基本法》第二十四條第四段的規定,即 是必須通常在香港連續住滿七年,並且把香港視作永久居留地。

第三,根據《基本法》第二十六條,香港特別行政區永久性居民依法享

有選舉權和被選舉權。但永久性居民身分和有責任繳納稅項,兩者之間並無相互關係。《基本法》第四十二條規定,在香港的任何人士,無論他是否具有香港特別行政區的居留權,都有義務遵守香港特別行政區實行的法律,當中包括遵守稅務方面的法律。按照《稅務條例》,某人是否需繳納稅項,是根據其收入或利潤是否來自香港而定,並不涉及他是否擁有永久性居民的身分。

我必須強調,不少細節問題,包括涂議員所提出的問題,都需要先行解決,然後,政府才可以就中方對非中國籍人士的居留權所構想的安排,訂出一個立場。我們正繼續透過聯合聯絡小組,與中方商討:而我們的目標,仍然是盡早謀求圓滿解決這些問題。由於這些討論,受到《聯合聲明》內保密條文的規管,因此,我不可以披露我們與中方官員的討論詳情。假如雙方能夠就這些問題,達致令人滿意的結論,我們當然會公開交代我們與中方所達成的安排細節。

**涂謹申議員問**:主席先生,立場的問題,是有關保安司答案的第二段的。他 說《基本法》第二十四條的規定是,如果是外籍人士,必須通常在香港連續 住滿七年,並以香港為永久居留地,才可得到永久居民身分。

我想問,香港政府或英國政府對"通常在香港連續居住七年"的立場,而《基本法》內的字眼是"特區成立以前或以後",請問保安司的立場是否"以前或以後",換言之,其實,有關人士在成為外國公民之前,如果在香港居住了七年,是否也可以計算在內呢?

我問的是香港政府及英國政府的立場。

**保安司答**:主席先生,正如涂議員所說,對於這一方面《聯合聲明》是寫明 "九七年以前或以後"的。我亦不打算在這裏很詳細地討論究竟實際的實施 安排如何。因為,我們正在與中方商討這個問題,究竟將來中方所構思的安 排會是怎樣的呢?是否可以實行?會否帶來其他不良影響呢?會否在某一方 面跟《基本法》有出入?這些都是我們正在與中方商討的問題。

**PRESIDENT**: Mr TO, are you claiming that your question has not been answered?

**涂謹申議員問**:是的,保安司沒有回答質詢的那個部分。根據政府對這項條 文的理解,在特區成立之前的七年是否包括在內呢?

如果政府想不回答,就可以不回答,但保安司的答案卻並未顯示他決定 回答還是不回答,或有沒有立場。

**保安司答**:主席先生,《基本法》第二十四條第四款,寫得很清楚,"在香港別行政區成立以前或以後持有效旅行證件進入香港。在香港通常居住連續七年以上,並以香港為永久居住地的非中國籍的人";在這方面,九七以前或九七以後都包括在該第二十四條第四款所載者內。這個不是我們是否接受的問題,而是聯合聲明及《基本法》都是這樣載明的。

**PRESIDENT**: Perhaps next time, Mr TO, you may wish to ask whether or not the Chinese side and the British side have different interpretations of the relevant Article 24(4).

**楊孝華議員問**:主席先生,保安司在答覆的最後部分表示,希望雙方經過討論,會對這個問題有滿意的結論。

我想問香港政府,在談判過程中爭取將來達致的所謂滿意結論,會否只是一些原則性的結論?其實,這些結論可以不需要太細微,可留待將來的候任班子或留待香港政府立法或特區政府立法後,由香港本身的入境處作為實施《國籍法》的執行機關,而無須事事問中央。

**保安司答**:主席先生,我想提出兩點。第一,大家都很清楚,中方所公布的文件,包括剛才我提到的人大常委會通過的中國國籍法解釋文件所載事情,許多都是原則性問題。在這方面,大家亦很清楚會引起一連串細節問題。當我們要研究及解決有關國籍、出入境、居留權這些問題時,很難單談原則,不談細節。因為,每個人的個別情況都不同,每個人都想很清楚地知道,將來的安排會是怎樣的,對他們的影響又會是怎樣的。我相信就九七過渡的信心而言,如果我們能夠將這個問題,包括所有關細節,很清晰地解決,亦可以公布的話,我相信對於受影響的人士的信心是會有好處的。

至於立法問題,我亦想藉此機會說清楚,因為有些報章報道,香港政府不同意幫助中方在這方面立法。我想說清楚,假如我們與中方有關永久居留

權問題進行的討論能夠有完滿結果的話,我們絕對願意更改,並採取行動修訂《人民入境事務條例》,以便與現行法例及《基本法》的有關條款相一致。就這方面而言,我想作一個很清晰的解釋,就是,我們從來沒有像報章報道所說,不肯立法,只是我覺得沒有這種需要。如果我們能夠預早解決,就沒有需要留待九七後才立法。好處是越早立法,就能夠越早讓受影響人士都清楚將來對他們有何影響。

**劉慧卿議員答**:正如保安司所說,這件事很複雜,也很敏感,也是很多人很關注的,亦是很多其他外國政府很關注的。我想問保安司,其實現在進行的談判,有沒有一個時間表呢?剛才你提到立法,目標是否希望在明年七月一日就有整套安排,到時候,回來香港的人,就馬上知道要怎樣做,還是有可能會做不到。如果做不到,到時會否出現很大混亂,及會產生很大問題呢?

主席先生,我想問保安司,其實這個目標是怎樣訂出來的,是否中國政府和香港政府都希望在明年七月一日之前,在法例上做好各方面安排,使外國政府或任何回到香港的人士馬上知道要怎樣做,而有關官員亦知道應怎樣處理各方面的申請呢?

# **PRESIDENT**: Whether or not there is a timetable, Secretary?

**保安司答**:主席先生,我們的目標很簡單,我們希望能夠在九七年七月一日之前,或在比該日期更早的時間,盡早完滿解決這個很多人關注的問題,並能夠用立法的形式把將來解決事情的模式規定下來,讓大家很清楚知道將來的安排會對他們有甚麼影響。

我們從與中方進行的多次討論中,知道中方對解決這個問題的急切性是 有所認識的。我相信如果我們能夠在未來的日子裏,盡快進行討論和合作, 我們便可以在九七年七月一日之前解決這個問題,甚至進行立法,這是應該 做得到的。

# **Western Corridor Railway Consultancy Contracts**

- 4. **劉漢銓議員問**:關於建議中的跨越九七的西部走廊鐵路工程計劃,政府可否告知本局:
  - (a) 除九廣鐵路公司迄今已批出的總值 4.34 億元的多項顧問合約

外,還打算批出多少份顧問合約,當中涉及的項目及費用為 何;當局在批出這些顧問合約前,會否徵詢中方的意見;及

(b) 現時整項工程中有哪些預備或初步工作、顧問研究及設計工程 已經完成;及九廣鐵路公司進行這些研究及設計工程前有否知 會香港政府或得到香港政府的同意?

運輸司答:主席先生,九廣鐵路公司計劃進行的下一階段顧問工作,是批出一連串技術研究,其中包括20份合約,費用約為7.5億元。該公司迄今已就11份總值約5.6億元的合約進行招標,但至今未批出任何合約。技術研究的範圍涉及整條鐵路,即由西九龍至屯門中部、落馬洲及羅湖全綫;有關詳情載於答覆的附件。

鑑於西部走廊鐵路的設計仍在構思階段,因此必須進行技術研究,訂定詳細的計劃,以便定出確實的路綫、解決主要的工程及其他問題,以及更準確地估計工程費用。換句話說,技術研究將會提供所需的資料,以便政府深入研究和作出決策。

據九廣鐵路目前估計,這項計劃所需的土地約400公頃,當中包括須清 拆270公頃的政府土地及須收回130公頃的私人土地。這些土地很多是住宅、 農業、商業及鄉村區,並有超過1 000個墓穴。根據地政總署最近完成的初 步評估,這項收地及清拆工作約需五年完成。這意味着動工日期可能要遲於 九廣鐵路建議所預期的時間,並須把目標竣工日期相應修訂至二零零一年以 後。

由於上述因素,九廣鐵路也許無須按原定計劃在同一時間進行所有技術研究。因此,政府已要求九廣鐵路考慮在現階段將研究範圍縮窄,局限於制訂西部走廊鐵路確實路綫所必需進行的研究,以便減低收地及清拆方面的需求。

待技術研究完成,而政府也決定推展這項計劃後,九廣鐵路便須批出其 他顧問合約,以便進行詳細設計及監督建造工程的工作。

至於劉議員提出有關諮詢中方的問題,政府已不時向聯合聯絡小組的中方代表匯報西鐵計劃的進展情況。此外,假如我們的決定會令未來特區政府承擔責任,我們一定會事先徵詢中方的意見。我想強調,技術研究是西鐵計劃的整體規劃工作中不可或缺的一環。但這些研究只不過是一些預備工作。香港政府或未來特區政府,都無須因進行了這些研究而務必推展這項計劃。

至於質詢的(b)部分,九廣鐵路是根據迄今已完成的顧問研究結果,而向政府提交西鐵計劃的詳細建議書的。這份建議書的內容如下:

- (a) 載述了西鐵的計劃大綱、初步成本預算和財務分析;
- (b) 初步評估了一些須加以處理的問題,例如涉及法律、土地、運輸; 工程和環境的主要問題;
- (c) 闡述了九廣鐵路對西鐵計劃在工程和財政方面是否可行的意見;及
- (d) 提供了所需資料,讓該公司與政府展開磋商,並可作為日後進行其他技術研究的依據。

九廣鐵路自提交建議書後,便一直為技術研究進行籌備工作,並已招標 承投11項顧問合約。雖然該公司已初步選出一些投標者,但一如本人先前所 述,合約至今仍未正式批出。

總括來說,九廣鐵路自一九九一年起,便一直進行與西部走廊鐵路計劃 有關的研究。這些研究都是完全依據《九廣鐵路公司條例》所訂的責任和權 力而進行。該公司在進行顧問研究和設計工程前,無須特別知會政府或取得 政府的同意。不過,政府與該公司經常保持密切聯繫,商討建議書內所述的 各項問題,因此,政府一直知悉這些研究。

附件

#### 技術研究的範圍

- 一 路綫檢討;
- 一 車站及結構方案;
- 一 不同鐵路系統的操作要求,包括列車、列車控制及信號、牽引力; 電訊系統及貨運管理;
- 一 環境/交通/渠務影響評估;

- 一 通風系統研究;
- 一 安全及可靠程度研究;
- 一 與輕鐵系統的配合;
- 一 與現有地下鐵路及九廣鐵路系統的聯繫;
- 一 地表下的土力工程勘測工作;
- 一 擬定較準確的工料及成本預算;及
- 一 詳細界定土地需求。

劉漢銓議員問:主席先生,運輸司在主要答覆第四段提及,政府已要求九廣 鐵路考慮在現階段將研究範圍縮窄。請問如果九鐵不理會政府的要求,政府 有否辦法防止九鐵一意孤行進行這些研究,以免浪費納稅人的金錢?

**運輸司答**:主席先生,當天我在九廣鐵路董事局上將政府這個意向轉達九鐵董事局時,他們都對這項建議表示歡迎。我相信他們會繼續與政府磋商,如何在技術研究方面將範圍收窄,令收地和清拆的需要減至最低。

**MR EDWARD HO**: Mr President, according to the Secretary's reply, the exercise of resumption of land and clearance will take about five years to complete. Can he please advise this Council when resumption is scheduled to start and also whether it means that the construction of the railway could not start until all the land resumption and clearances have been done?

**PRESIDENT**: I think the supplementary could be more usefully tackled at a motion debate next week. You are asking for a timetable for land resumption which is not within the scope or the main purpose of the original question.

**MR EDWARD HO**: Mr President, I merely wanted to ask for clarification of the statement because the Secretary in his main reply said it takes five years to complete. I just want to ask whether that means that the railway could not start until the completion of the resumption exercise?

SECRETARY FOR TRANSPORT: Mr President, the land resumption exercise cannot start until a number of things have been achieved, including the determination of the alignment. This is precisely why we want to do further technical studies in order to enable us to make a decision on the alignment of the railway. And secondly, we need to ascertain the extent of the problem of the land resumption. I should mention for this Council's information that a planning team within the Lands Department has been set up precisely to look into the resources required. Until the information is to hand, I am afraid I cannot ......

**PRESIDENT**: Secretary, your answer is outside the scope of the original question.

SECRETARY FOR TRANSPORT: I beg your pardon, Mr President?

**PRESIDENT**: I allowed that question simply because it is seeking a very simple answer to a very simple question. Can the project proceed before all land have been resumed?

**SECRETARY FOR TRANSPORT**: I am afraid not, Mr President.

單仲偕議員問:主席先生,香港法例第372章《九廣鐵路公司條例》賦權九廣 鐵路公司興建屯門至元朗的輕鐵和九廣鐵路,但並沒有包括現在所說的西北 鐵路,而九廣鐵路花了四億多元進行研究工作,有否超越法例所賦予的權 力? **運輸司答**:九廣鐵路提交建議書給政府,是香港政府依從行政局的指令要求他們向我們作出建議。在提出建議後,他們想繼續進行一些技術研究,於是在今年二月,我們透過立法局的認可,向他們發出《九廣鐵路公司(認可活動)令》,使他們可以繼續有一個法律的依據來進行研究工作。

MR RONALD ARCULLI: Thank you, Mr President, on the question of land resumption, could the Secretary tell us when the Mass Transit Railway was built, whether the commencement of the project started before all the land that was required were resumed?

**SECRETARY FOR TRANSPORT**: Mr President, I am afraid I do not have the information at hand. Can I provide it in writing? (Annex IV)

黃偉賢議員問:主席先生,運輸司主要答覆的第一部分提到這些技術研究只是預備工作,香港政府或未來的特區政府都無須因進行了這些研究而務必推展這項計劃。我想請運輸司解釋一下,這句說話是否表示做完這些研究後,也可以不興建西部走廊鐵路?若是這樣,所撥出的數億元豈非投進了大海?

**運輸司答**:主席先生,嚴格來說,是可以不理會那個結果,而不進行這項計劃。不過,我要強調一點,政府一向的意向都是非常重視西北鐵路,我們是有意思興建西北鐵路的。

劉健儀議員問:主席先生,主要答覆的第二段提及政府需要技術研究所提供的資料才可以作出決策。立法局財務委員會在去年批撥了4,500萬元給政府聘請顧問來評估西鐵的初部可行性研究。請問政府花了這4,500萬元聘請的顧問有否責任來兼顧技術方面的研究?若有的話,為何當時申請批撥4,500萬元的文件完全沒有提及技術研究;在立法局交通事務委員會一月的會議上也完全沒有提及這些技術研究,而政府亦一直誤導議員,說這些顧問在評審

可行性研究後,政府就可以就西鐵作出決定?

**運輸司答**:主席先生,政府向財務委員會申請撥款時,是將顧問工程的範圍大致告知立法局財務委員會,我相信我們沒有可能將每一個細節都說出來。當然,如果議員問及,我們一定會詳細答覆。

# KCR's Dividend Payment to the Government

- 5. 李家祥議員問: 主席先生, 九廣鐵路公司在一九九四年及一九九五年的稅後溢利分別約11億元及9億元, 但政府均未有根據《九廣鐵路公司條例》第9(1)條要求該公司從有關年度的純利中, 分派款項予政府。就此, 政府可否告知本局:
  - (a) 政府沒有要求該公司分派有關款項予政府的依據及考慮因素為 何;政府的決定是否與該公司需要用於西部走廊鐵路的顧問研 究費用有關;
  - (b) 是否知悉該公司會否以借貸方式支付上述的顧問費用;及
  - (c) 政府有否與該公司董事局討論有關在一九九六年或以後分派款 項予政府的事宜;若有,結果為何?

#### 運輸司答:主席先生,

- (a) 一九九四年,政府決定不要求九廣鐵路分派款項,這主要是由於該公司計劃於一九九五年動用30億元進行基本改善工程,其中包括動用1.2億元進行與西部走廊鐵路建議有關的初步研究。
  - 一九九五年,政府再次決定不要求九廣鐵路分派款項,理由大致相同,即該公司計劃於一九九六年分別動用25億元改善設施和服務、 15億元進行與西部走廊鐵路建議有關的進一步研究,以及5億元贖 回年內到期的不記名債券。

政府決定不要求九廣鐵路分派款項,目的是讓該公司把賺得的利潤 用於應付其他資金需求。值得一提的是,在一九九零至一九九三年 的四年內,政府要求公司分派的款項平均約為每年1.44億元。

- (b) 據我們所知,九廣鐵路有意在本年稍後時間舉債30億元,作為部分的營運資金,用以應付該公司的整體營運需求,包括在本問題(a) 部的答覆內列舉的支出項目。我們認為不宜把營運資金某一部分視為用以支付個別開支項目的撥款。
- (c) 政府每年會根據九廣鐵路的財政狀況和業務計劃,考慮應否在該年度要求九廣鐵路分派款項。政府在考慮過程中,也會聽取九廣鐵路董事局的意見。政府沒有特別就分派有關款項的問題,另行與董事局磋商。

至於今年及以後是否要求九廣鐵路分派款項,政府至今仍未有決定。

李家詳議員問:主席先生,我非常詳細研究過九鐵這三年的帳目,很清楚知道九鐵主要的收入來源,是營運現時的鐵路和在九四年發展地產的少少收益。唯一的借貸是一九九一年十月十八日借過5億元不記名的債券。換言之,九四至九五年所有收入,全部是營運現時鐵路的收入而來的。政府可否向本局解釋,政府有否既定的政策,在現時投資來說,必定要給政府一個特定的回報,為何九四至九五年不收取這項回報而將資金投入西鐵?同時,九五年終還要借貸30億元,肯定是有計劃的借貸,加上每年營運現時鐵路的10億元左右的收入,將會有大約40億元的現金。計劃中這40億元的現金究竟有多少用於西鐵的研究,而用於西鐵研究的資金究竟來自借貸還是營運現時鐵路的收入?

**SECRETARY FOR TRANSPORT**: Mr President, may I ask the Secretary for the Treasury to give an answer to this question.

**庫務司答**:主席先生,李議員剛才質詢的第一點,是政府有否規定九廣鐵路每一年從盈餘撥多少給政府作利息,答案是沒有的,因為正如運輸司剛才亦回答得很清楚,我們每一年作出決定時,是要看九廣鐵路的整體財政狀況以

及營運計劃,我們才可以決定我們應該要求九廣鐵路從其利潤撥多少給政府。

第二部分的質詢是關於九廣鐵路今年計劃舉債的問題,當然,亦正如運輸司所說,舉債是為了九廣鐵路整體的營運開支,在這情況下,實難說營運資金哪部分是支付哪個開支項目。雖然九廣鐵路初時有計劃動用15億元進行與西鐵有關的研究,但是正如運輸司在回答第四項質詢時所說,現在九廣鐵路是有需要重新評估這些研究,並與政府磋商後才作決定,因此九廣鐵路在本財政年度內,實際會支出多少作西鐵研究亦要重新評估。

單仲偕議員問:主席先生,我想跟進李家祥議員的質詢。九鐵的主要收入來 自票務的收入,現在將部分的收入盈餘或盈利用於興建西鐵,政府的政策是 否透過現時的營運資助西鐵的興建,還是由政府直接注資西鐵的興建?

運輸司答:主席先生,據我們從九鐵得到的資料,他們並沒有意思或需要將現時的營運津貼將來西鐵的興建。至於注資問題,政府正在細心研究,未有定論。

張漢忠議員問:主席先生,根據政府的答覆,我們看到政府總共要動用16.2 億元作為西部走廊鐵路的研究,但是接着來年便會舉債30億元作為營運資 金,這種做法會否令人覺得九鐵是利用九廣鐵路的使用者津貼興建西部鐵路 呢?是否違返了當時說九廣鐵路現時的使用者無須津貼西部鐵路的承諾呢?

**運輸司答**:主席先生,我要重複我剛才的答覆,就是九鐵並沒有意思或需要將現時營運所得的收入津貼西鐵的建造。

周梁淑怡議員問:主席先生,九廣鐵路為進行西鐵顧問報告而撥出來的15億元是一筆很龐大的款項,而政府在九廣鐵路公司的董事局內有兩位官員出任成員。請問這兩位官員在董事局內和政府內部是有些甚麼程序和監察的措施,以確保這15億元得到最經濟和最有效的應用,並且是以甚麼程序來達到最高的透明度向公眾作出交待?

**運輸司答**:主席先生,在九廣鐵路公司董事局內有固定的程序,每年的預算

一定要提交給董事局審核。當然,其中有很多內容是牽涉研究工作和其他款項的使用,董事局是會知道的。至於其他的程序包括假如每一項超過2,000萬元的合約,一定要事先得到董事局的批准,九鐵才可以進行。至於透明度問題,我可以說,九鐵作為政府全資經營的機構,當然要向政府負責,而政府亦向立法局負責,其中包括每年我們要求九鐵呈交年報,將會審核報告然後呈交財政司,財政司亦會將這些報告和審核的數據呈交給立法局考慮。

**PRESIDENT**: Mrs CHOW, are you claiming that your question has not been answered?

周梁淑怡議員問:運輸司回答我質詢的後部分時,只是說一般性的問題。我 是質詢他關於西鐵的顧問研究問題,他卻沒有提及西鐵的顧問研究究竟是如 何達到最高的透明度和向公眾交代的程度。

**PRESIDENT**: Secretary, the \$1.5 billion?

**運輸司答**:主席先生,他們要求的款項是尚未動用的,當然我們剛才有提及 我們要求將研究的範圍縮窄,而我剛才亦說過,政府一定與九鐵磋商將範圍 如何收窄才進行這些研究。

李家祥議員問:主席先生,運輸司答覆其中一段迴避開了有否與九鐵董事討論,但他說有聽取意見,我很想知道九鐵董事局內發生了甚麼事?實情是如何?究竟九鐵向政府提供了甚麼意見,是政府根據這些意見決定不派息還是政府主動表示不派息呢?錢是實實在在花掉了,但是政府說不是借,又不是在東鐵得來,又不是變相的注資,究竟九鐵與九鐵的董事局知不知道這些金錢是由何處來呢?

**PRESIDENT**: I regard that to be highly argumentative.

**SECRETARY FOR TRANSPORT**: Mr President, may I ask the Secretary for the Treasury to provide an answer to this question.

庫務司答:主席先生,關於政府決定在一九九五年不需要九鐵支付股息,主要是回應九鐵主席向政府提交的建議作考慮。九鐵主席向政府提交的建議時,反映了九鐵董事會的意見。關於與西鐵有關的研究,在九鐵的帳目內亦有提及是屬於一些大型的開支,當然,這開支是從九鐵的整體資源支付,很難說是從哪個部分。

## **Housing Authority Expenditure on Publicity Programmes**

- 6. 馮檢基議員問:主席先生,據悉,在一九九五至九六年度,房屋委員會("房委會")約用了272萬元宣傳"維護公屋資源的合理分配"政策,其中130萬元用於報章、電視及電台的宣傳。另一方面,自一九九二至九三年度房屋署實施"租金援助計劃"以來,用於這方面的累積宣傳費用只有約58萬元,平均每年為145,000元。有見及此,政府可否告知本局:
  - (a) 為何用於兩項房屋政策的宣傳費用有此差距;及

房屋司答:主席先生,我們不應把"維護公屋資源的合理分配"的諮詢文件 及宣傳活動所需要的費用,和"租金援助計劃"的宣傳費用作直接的比較。 基本上,這兩項活動無論在性質、規模、宣傳對象和手法等各方面都有很大 的分別。

"維護公屋資源的合理分配"的諮詢文件,目的是要提出一個新的政策,以解決公屋"富戶"的問題。由於文件內的建議將會直接影響全港所有公屋租戶和準租戶,並且涉及社會資源的分配和運用等原則性問題,所以我們必須十分謹慎地處理有關的諮詢工作。我們期望在三個月的公眾諮詢期間,社會人士能夠就文件中的建議踴躍地作出回應。因此,我們的諮詢和宣傳活動必須透過多種途徑,引發社會各階層人士的廣泛討論,所以開支方面也須反映這個性質。

相反,"租金援助計劃"並不是一個新的政策或建議。這個政策自一九九二年已經開始實施,而援助的對象只是那些財政上暫時遭遇困難的公屋住戶。直到目前為止,房委會已經向超過1 400個家庭提供援助。這個計劃的宣傳費用,主要是用於派發小冊子、張貼海報和電台廣播等活動。但是,除了這些需要花錢的宣傳活動以外,我們亦會透過其他途徑去推廣有關的計劃,譬如房屋署管理人員和屋邨聯絡主任與住戶的日常接觸。此外,我們在租金調整通知書及每兩個月出版一次的房委會的通訊刊物內,亦會提醒有需要的住戶提出申請援助。現時的"租金援助計劃"的宣傳費用,其實未有包括這些更直接的推廣活動所需的成本或費用。

在今個財政年度,我們預算就這個計劃撥款二十餘萬元作宣傳之用。我 們將會增加報章宣傳及電台的廣播,以及重新印製宣傳海報和小冊子等。

**PRESIDENT**: For clarification, Secretary, when you used the words in the last paragraph "we have budgeted for some \$200,000 in connection with publicity of the Rent Assistance Scheme", does that "we" refer to the Government or to the Housing Authority?

**SECRETARY FOR HOUSING**: Mr President, "we" here stands for the Housing Authority.

**PRESIDENT**: But, Secretary, you are not here to answer for the Housing Authority.

**SECRETARY FOR HOUSING**: Mr President, I am simply here stating the position of the Housing Authority in relation to a question presented by a Member of the Legislative Council.

馮檢基議員問:主席先生,房委會現時向3萬個受到"維護公屋政策資源合理分配"政策影響的所謂"超級富戶"派發單張,並要他們填寫表格,但房委會卻沒有對四萬多個估計的"困難戶"逐戶做任何工作。房屋科會否考慮在這方面也做一些同等的工作呢?

房屋司答:主席先生,對於那些在財政上暫時出現困難的公屋住戶,房屋署當然會留意他們的問題。正如我在主要答覆中已經解釋,我們會用各種不同方法直接接觸住戶,並會採取其他宣傳方法,雙管齊下,希望直接讓這些有需要的人知道這計劃,並作出申請。

**PRESIDENT**: I have the names of three Members on my list, I propose to draw a line there.

廖成利議員問:主席先生,請問當局會否以富戶政策中所得到的額外收入, 對 "租金援助計劃"下的困難戶提出實際幫助,例如進一步放寬他們申請困 難戶的資格,令多些人受益,以這方法來宣傳房委會是真正想幫助那些困難 戶?

**PRESIDENT**: I am afraid this is outside the scope of the original question although you have been able to include the word "publicity" in your supplementary question.

梁耀忠議員問:主席先生,由九二年至今已有1 400個家庭獲得房委會提供租金援助,反映出社會上確實有這個潛在的需要。請問政府為何在九六至九七財政年度內,只撥款二十多萬元作宣傳,而不是三十多萬或四十多萬,甚或更多款項,來進行更廣泛而有效的宣傳,令更多有需要的住戶了解這個計劃?請問這項撥款有何釐訂準則?

**PRESIDENT**: Is the Secretary aware of the rationale of the \$200,000 in the Housing Authority's budget for 1996-97?

房屋司答:主席先生,這問題其實是一個規模較小的問題,因為在公屋住戶中出現臨時財政問題的,其實並不太多。事實上,我們在屋邨內直接接觸他們,以及透過電台、電視和派發單張進行宣傳,已經相當足夠。我們認為現有的途徑已能達到這個目的。至於撥出二十多萬元來作宣傳,這其實只是一個預計的數字。當然,今年我們會做多些宣傳工作,例如在報章上刊登廣告,提醒有關住戶,但最重要的方法是直接接觸這些住戶,以及用單張去提

醒他們。

**PRESIDENT**: Mr LEUNG, are you claiming that your question has not been answered?

梁耀忠議員問:是的。

## **PRESIDENT**: Which part?

梁耀忠議員問: 因為剛才我問的是釐訂撥款的準則,但他沒有回答準則為何。

房屋司答:20萬元這數目其實不是一個很具科學性的釐訂準則,我們認為以一個小型宣傳計劃計算,20萬元撥款已經是一個相當合理的數字。據我們估計,二十多萬元足以進行印製小冊子、單張,以及在報章刊廣告的宣傳工作。

陳婉嫻議員問:主席先生,我很希望政府能夠告知我們當局的準則。"維護公屋資源合理分配"政策用了二百七十多萬元作宣傳,但"租金援助計劃"從九一年至今只用了五十多萬元,令我們感到政府是在有利於政府的,或政府可能收到費用的政策上,就會用較多宣傳費,請問政府是否以此作為準則呢?政府能收多些錢的就多用一些宣傳費,但會令政府蝕本的就少用一些宣傳費,政府是否以此為準則呢?我要求房屋司告知我們,究竟準則為何?

房屋司答:主席先生,我們不會因為一些政策或工作能令政府多些收入,就作較多宣傳。我們的準則最重要是視乎事件或新政策或建議是否特別重要,或是否第一次提出來,要香港市民作出討論。如果是這樣的話,我們在宣傳方面所用的支出一定會較大。但如果是一個已確立的計劃,大致上很多人已對這計劃有所認識,我們過往也曾作出宣傳,我們現時只須繼續進行經常性的宣傳,就可以達到效果。因此,房委會預留出來的款項,只不過是用來應付一般所需進行的宣傳工作。

# WRITTEN ANSWERS TO QUESTIONS

# **Kennedy Town Redevelopment**

7. MR EDWARD HO asked: The sites surrounded by Kennedy Town New Praya, Catchick Street, Davis Street, Cadogan Street and Belcher's Street in Western District have been zoned as a Comprehensive Development Area for more than seven years, and there have not been plans by any public or private agencies to develop the sites comprehensively. In view of this, will the Government inform this Council whether it has any definite plan for a comprehensive development of these sites and if not, whether it will apply to the Town Planning Board to re-zone these sites for residential or commercial uses so that the private property owners concerned can develop the properties on their own?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the Hong Kong Housing Society (HKHS) obtained approval from the Town Planning Board in 1992 to carry out the Comprehensive Development Area (CDA) project in question. HKHS subsequently found that if all the demands for compensation and rehousing by the owners and residents were to be fully met, the project would not be financially viable. HKHS then considered a number of options for discussion with the Government on how the project could In January 1996, the Government invited the Land be taken forward. Development Corporation (LDC) to study, on a "no commitment" basis, the feasibility of taking over the project from HKHS. LDC put forward an initial proposal in March 1996 for discussion with HKHS and the Government. will conclude our consideration of the project as soon as possible, and hope to work out a feasible way forward on the implementation of the project before the Town Planning Board's approval to HKHS expires on 25 September 1996. have no plan at this stage to re-zone the area for other uses.

# Post-registration Installation of Crashproof Headframes on Vehicles

8. 張漢忠議員問:現時很多汽車(包括七座位私家車、小型貨車、小型客貨車)登記後,均在車頭安裝防撞架。根據報章引述的外國研究報告,裝設該等防撞架的汽車撞倒行人時,會造成嚴重傷亡。有見及此,政府可否告知本局,車輛登記後安裝防撞架是否合法;若否,會否提出檢控?

**運輸司答**:主席先生,本港沒有證據顯示,車輛裝置防撞架會危害其他道路 使用者。

根據《道路交通條例》規定,車輛安裝防撞架並不違法。不過,根據《道路交路(車輛構造及保養)規例》或《道路交通(車輛登記及領牌)規例》的規定,如果防撞架阻擋車燈或登記車牌,或有尖銳部分凸出,可能危害其他道路使用者的安全,則車主可被檢控。違法者一經定罪,最高可被判罰款1萬元和監禁六個月。

# **Mortgage Corporation**

- 9. **MR SIN CHUNG-KAI** asked: Regarding the proposal to set up a Mortgage Corporation, will the Government inform this Council:
  - (a) why, in addition to playing the role of an agency or a regulatory body in assessing the quality of mortgage pool, the Mortgage Corporation should take up the intermediary role which can be played by the private sector;
  - (b) of the benchmark which will be adopted by the Mortgage Corporation in setting the price of the mortgage-backed securities (MBS);
  - (c) of the difference in status between the MBS issued by the Mortgage Corporation and the Exchange Fund Notes issued by Hong Kong Monetary Authority;
  - (d) whether it knows of any government-owned mortgage corporation in other countries which is incorporated as a private limited company; and
  - (e) whether it knows of any central bank in other countries which runs profit-making businesses such as a mortgage corporation?

# SECRETARY FOR FINANCIAL SERVICES: Mr President,

(a) A mortgage corporation is a financial intermediary operating on a commercial basis. It typically purchases residential mortgage loans from loan originators and funds such purchase through the issue of debt securities. It assesses the quality of the mortgage loan pool for the purpose of managing the credit risk of the mortgage loans it purchases. It does not perform the credit assessment function for regulatory purposes.

While the banking system has been playing a predominant role in the intermediation of mortgage funds, there is a major difference between intermediation by the banking system and that by a mortgage corporation. Banks rely mostly on short-term funding (for example, short-term customer deposits and interbank deposits) to finance long-term mortgages. A mortgage corporation, on the other hand, raises long-term funds to fund mortgage purchase, thus avoiding the maturity mismatch between its liabilities and assets. A mortgage corporation thus helps to improve the robustness of the home financing system.

As evidenced by the experience of mortgage corporations overseas, government support is essential for the successful operation of the corporation, especially at the initial stage, as this will greatly facilitate the acceptance of the corporation by the market. This view is shared by the banking sector and capital market participants.

- (d) The price of the debt securities issued by the mortgage corporation will be determined by the market.
- (c) Under the proposal, the mortgage corporation will issue unsecured debt paper in the first phase, followed by the introduction of the mortgage-backed securities (MBS). The unsecured paper will constitute the general obligations of the Mortgage Corporation, The MBS will be backed by a pool of mortgages. The revenue

generated by the mortgage pool (that is, payment of principal and interest by Mortgagors) will be passed onto the MBS holders. Both the unsecured paper and the MBS issued by the Mortgage Corporation will not be guaranteed by the Government.

The Exchange Fund Notes constitute the direct, unsecured, unconditional and general obligations of the Hong Kong Government for the account of the Exchange Fund.

- (d) As far as we are aware, Cagamas Berhad, the national mortgage corporation in Malaysia, is 20% owned by the Bank Negara Malaysia (central bank of Malaysia). The remaining equity is owned by other financial institutions. It is registered as a company under the Companies Act. FANMAC Limited of Australia is 25% owned by the State of New South Wales and the remaining equity is owned by financial institutions. It has been incorporated as a private company since its inception in 1986. The Federal National (Fannie Mae), the largest Association corporation in the United States, was set up and initially wholly owned by the United States Federal Government. It was partitioned into two separate entities in 1968. Fannie Mae became a listed company whereas the Government National Mortgage Association (Ginnie Mae) remains a government agency.
- (e) We do not have complete information on the various types of business undertaken by central banks/monetary authorities in other economies. As far as we are aware, many central banks/monetary authorities conduct a wide range of activities, some of which may generate profits. Notable examples include the management of official reserves, currency issue and the provision of securities clearing and settlement service. Specifically in relation to mortgage corporations, we understand that Cagamas Berhad, the national mortgage corporation in Malaysia, is 20% owned by Bank Negara Malaysia, the country's central bank. It is a profit-making institution earning RM61.8 million in 1994.

10. MR HOWARD YOUNG asked: There has been an increase in population in Tai Tam and its nearby areas as a result of the completion of a number of new residential projects in the area. This has led to an increase in traffic volume which will increase the risk of traffic accidents occurring along the narrow road on the Tai Tam Reservoir dam connecting the eastern and south-eastern parts of Hong Kong Island. In view of this, will the Government inform this Council whether it has any plan to widen the roads in the areas adjacent to Tai Tam, particularly the narrow road on the dam; if so, what the plans are; if not, why not?

**SECRETARY FOR TRANSPORT**: Mr President, there is a plan to widen the section of Tai Tam Road adjacent to the reservoir from a 5.0 m carriageway to a standard 7.3 m two-lane carriageway to provide a capacity compatible with the rest of Tai Tam Road. The scope of the project comprises:

- (i) widening the section of Tai Tam Road over Tai Tam Tuk Reservoir Dam to a standard 7.3 m wide two-lane carriageway;
- (ii) improving the alignment with widening of the southern approach to the dam;
- (iii) construction of a 1.6 m wide pedestrian footpath alongside the carriageway;
- (iv) associated landscaping work; and
- (v) stabilization works to the dam, if necessary.

Subject to the allocation of the necessary resources, consultants will be appointed to undertake the site investigation and detailed design. We expect work to commence towards the end of 2000 for completion in 2002.

# **Imprisonment of Persons under 18**

11. MISS CHRISTINE LOH asked: Before the abolition of capital punishment, persons who were under 18 years old convicted of murder were sentenced to be detained subject to Her Majesty's pleasure. Will the Government inform this Council whether any thought has been given to the arrangements which would be made concerning the status of such prisoners in Hong Kong after 1997, when Her Majesty will no longer be able to signify her pleasure through the Governor in respect of Hong Kong prisoners?

**SECRETARY FOR SECURITY**: Mr President, under section 70 of the Criminal Procedure Ordinance (Cap. 221), which was repealed in 1993, the court could order a young offender who was under 18 when the offence was committed to be detained until Her Majesty' pleasure (HMP) shall be known. There are now 24 persons serving such sentences.

At present, the Governor may pardon or remit the sentence of any offender (including offenders detained under HMP) pursuant to Article XV of the Letters Patent. After 30 June 1997, the Chief Executive will be similarly empowered under Article 48(12) of the Basic Law.

#### **Control of Amusement Games Centres**

- 12. **張文光議員問**: 自一九九三年十二月實施《遊戲機中心條例》以來,仍 常發現有遊戲機中心提供含有色情、賭博或暴力成分的遊戲,並容許小童玩 此等遊戲,違反遊戲機中心的發牌條件。就此,政府可否告知本局:
  - (a) 在一九九四及九五年,影視及娛樂事務管理處巡查遊戲機中心 的次數及巡查過多少間遊戲機中心;
  - (b) 影視及娛樂事務管理處向提供含有色情、賭博或暴力成分遊戲 的遊戲機中心,共發出過多少書面警告,及有多少間遊戲機中 心因上述情況被撤銷牌照或遭受檢控;及
  - (c) 共有多少間只准年滿 16 歲人士進入的遊戲機中心,因容許未滿 16 歲或身穿校服的小童進入遊戲機中心而遭受警告、停牌或檢控?

#### 文康廣播司答:主席先生,對於質詢所提的三點,謹答覆如下:

- (a) 在一九九四年,影視及娛樂事管理處人員曾到566間遊戲機中心巡查,次數合共1363次;一九九五年的巡查次數為1345次,所巡查的遊戲機中心的數目共有511間;
- (b) 一九九三年十二月至一九九六年五月期間,影視及娛樂事務管理處 曾向提供含有色情、賭博或暴力成分遊戲的遊戲機中心,發出700 封警告信。雖無遊戲機中心因提供該類遊戲而遭撤銷牌照,但有間 中心遭暫時吊銷牌照。因提供該類遊戲而被警方檢控的遊戲中心共 有15間;及
- (c) 一九九三年十二月至一九九六年五月期間,共有155間只准年滿16歲人士進入的持牌遊戲機中心,因容許未滿16歲或身穿校服的兒童進入中心而受到警告;因同樣理由而被警方檢控的遊戲機中心共有177間,但並無遊戲機中心遭撤銷或暫時吊銷牌照。

# **Access for Emergency Vehicles in Village Clusters**

- 13. 張炳良議員問: 現時新界某些地區的村屋及丁屋密集成群, 使人關注 到該等地區在出現緊急事故時的處理問題。有見及此, 政府可否告知本局:
  - (a) 在該等地區興建村屋或丁屋,是否需提供足夠空間供緊急服務 車輛(例如消防車及救護車)進入,才會獲得批准;
  - (b) 若(a)項的答案為否定,如何確保在該等地區發生緊急情況時, 有足夠空間容許緊急服務車輛進入;及
  - (c) 在過去三年,有關當局曾否遇到因上述問題以致救援工作出現 困難及延誤的情況;若有,有關個案的數目為何?

#### 規劃環境地政司答:主席先生,

(a) 雖然政府批准興建丁屋時,並無法例規定必須鋪設緊急車輛通路,

但根據丁屋批地規約,承批人必須自費鋪設適當通路,讓消防車及 消防人員可到達有關地段內任何已興建或將會興建的建築物,這些 通路亦須為消防處長所感到滿意者。此外,承批人必須不時進行維 修,確保通路暢通無阻;

- (b) 在製訂村屋/丁屋發展圖則,或處理有關規劃申請時,緊急車輛通路亦會根據消防處處長的規定而納入規劃設計的範圍。至於鄉村擴展區的整套發展計劃,通常亦包括鋪設緊急車輛通路;及
- (c) 在過去三年,消防處在這些地區執行救援工作時,並未遇到任何困 難或受到任何延誤。

## Air Quality inside Road Tunnels

14. 蔡根培議員問:政府可否告知本局,環境保護署是否有責任測試現時本港所有行車隧道內的空氣質素是否符合該署所定下的標準;若然,該署目前有何措施監察該等隧道內的空氣質素,以確保市民的健康?

規劃環境地政司答:主席先生,環境保護署的職責,是協助運輸署審查隧道公司提交的空氣質素監察結果。此外,亦建議適當措施,以確保空氣質素維持可接受的水平。舉例來說,環保署曾於一九九三年向各隧道公司派發"行車隧道空氣質素監察守則",訂下一氧化碳、二氧化氮及二氧化硫這三種空氣污染物的最低標準指引。

現有行車隧道的運作,包括將來的西區海底隧道,均受到法例或有關的管理合約條文規管。法例和管理合約都有規定,隧道公司須不斷監察隧道內的一氧化碳含量,確保含量不超出規定的限度。運輸署每星期均會進行監察檢查,以確保隧道公司沒有違反規定。至今的檢查結果顯示,隧道內一氧化碳的含量,大致維持在法例規定的限度以內。

政府亦會針對其他污染物的廢氣管制標準,研究可否改善保障隧道空氣質素的安排。政府會盡快與各隧道公司商討,研究進一步的措施,例如可否安裝二氧化氦監察器,以確保隧道空氣質素維持可接受的水平。

## **On-staircase Drug Abuse in Private Buildings**

- 15. 陳偉業議員問:本人近月來多次接獲荃灣區居民投訴,指吸毒者在私人樓宇梯間注射毒品,並遺留不少針筒。本人曾多次將投訴轉交警方處理,但投訴人卻稱問題未見改善。就此,政府可否告知本局:
  - (a) 市民在梯間目睹吸毒者注射毒品,若致電 "999" 熱綫號碼報 案,警方會否受理;
  - (b) 有何計劃及措施,以打擊吸毒者在私人樓宇梯間注射毒品問題;及
  - (c) 警方曾在位於罪惡黑點的大廈內進行 "高空巡邏"計劃,該計 劃有何成效;現時是否繼續實施該計劃;若然,會否考慮擴大 該計劃的範圍?

#### 保安司答:主席先生,

- (a) 市民致電"999"舉報罪案,不論性質為何,警方都會作出回應。
- (b) 警方的定時巡邏,會值破吸毒者在私人樓宇梯間注射毒品。警方對已知的黑點,會特別注意,並對有關這些罪行的舉報,作出回應。至於已知有吸毒者曾在梯間注射毒品的私人樓宇,荃灣政務處已鼓勵有關的業主立案法團或互助委員會加強大廈管理措施,包括鼓勵他們改善大廈公眾地方(例如梯間)的照明設備。
- (c) "高空巡邏"已是警方長久以來日常工作的一部分,並評定為非常有效。關於這種巡邏的需要,視乎不同地區而定,而調派人手方面,則由該區的警方指揮官斟酌區內的具體情況(包括已知罪惡黑點),然後決定。平均來說,荃灣區每天進行40次高空巡邏,其中包括巡邏那些曾有罪案發生及/或市民投訴受到吸毒者滋擾的私人樓宇。

# **Control on Contents and Pricing of Textbooks**

- 16. 李家祥議員問:有關本港出版的教科書,政府可否告知本局:
  - (a) 有何措施監察教科書的內容;
  - (b) 會否考慮管制教科書的銷售價格;及
  - (c) 政府是否知悉學校根據甚麼準則來選用教科書?

#### 教育統籌司答:主席先生,

(a) 有關監察課本的質素由教育署負責。教育署成立了一個課本委員會,負責為幼稚園及中、小學編訂和發出"適用書目表"。該委員會由教育署轄下課程發展處的副總監擔任主席,成員包括有各個課本審查小組的代表,這些小組的成員主要是來自官立及資助學校有關科目的現職教師,及教育署的分科專責人員。

如出版商希望所出版的課本列入"適用書目表"內,他們可把課本 擬稿送交課本委員會審查。有關的審查小組會按課程發展議會建議 的課程綱要及通過的指引,審查課本擬稿是否遵照規定,以確保課 本符合該議會的要求,而課文內容及格式亦是可以接受的。

(b) 盡少干預市場運作是政府的既定政策。政府既不管制課本的價格, 亦無意這樣做。

不過,教育署每年向學校發出通告,建議學校應盡量減輕家長為子女購買課本的經濟負擔。教育署的建議包括:

- (i) 學校為學生選定課本時,應考慮課本的價格,並在學校書目 表上列明價格,供家長參考;
- (ii) 學校應在其書目表列出新學期所需全部課本的詳細資料,以 便家長可以自由選擇購買新課本或舊課本;
- (iii) 如學生擁有屬較早期版本的課本,在教師協助下仍可使用, 則學校不應規定他們購買書目表上的最新版課本;及

(iv) 除非有充分的教學理由,否則,學校不應建議購買補充教材,如習作、測驗、作業等。

此外,根據一項三年制行政規則,出版商如擬修訂課本,須把擬議的修訂本交由教育署審閱。教育署通常只通過重要或大量的修改。此外,教育署亦定期聯絡各出版商協會,商討出版和審閱課本的事官。

(c) 教育署建議學校選用"適用書目表"上的課本,並因應不同學校學生在教育方面的需求,作為選擇的主要準則。教育署轄下輔導視學處的有關科目組會在有需要等,就選用合適的課本,向學校作出建議。教育署並不接受學校以與某出版商之間的長期協議,而選用某一課本為合理的原因。

## Student In-take of Engineering Faculty of Tertiary Institutions

- 17. 黃秉槐議員問: 政府可否告知本局:
  - (a) 一九九五至九六學年各大專院校取錄工程學系各科(包括電腦 科)的新生數目;及
  - (b) 上述各大專院校每間所取錄的新生中,有多少已經擁有工程學 系的高級工程文憑或證書,及其中有多少新生獲得直接進入第 二年修讀?

#### 教育統籌司答:主席先生,

- (a) 大學教育資助委員會資助的七間高等教育院校,其工程學院各學系(包括電腦學系)一九九五至九六學年取錄學生的人數資料,載於 附件A。
- (b) 附件A所列學生當中,持有工程學高級文憑或證書的學生人數,以 及直接入讀二年級課程的學生人數,載於附件B。

# 一九九五至九六學年工程及電腦學科收生人數

學生人數

				烷化	绞		
科目	程度	城大	浸大	中大	理大	科大	港大
電腦科學及資訊科技							
電腦科學及資訊科技	SD	907	_	_	112	_	_
	UG	1 076	399	368	505	606	220
	TPG	142	46	7	374	24	30
	RPG	32	2	55	18	70	36
	小計	2 157	447	430	1009	700	286
				院礼	校		
科目	程度	城大	浸大		理大	科大	港大
工程學及科技							
化學工程及材料技術	UG	_	_	_	_	162	
	TPG	_	-	_	_	7	
	RPG	_	_	-	-	7	
	小計	_	_	-	-	176	
土木工程	SD	_	_	_	191	_	
	UG	_	-	-	335	294	
	TPG	_	_	-	146	30	
	RPG	_	-	-	40	30	
	小計	-	-	-	712	354	
電機及電子工程	SD	_	_	_	484	_	
(包括電腦工程)	UG	855	_	788	740	503	
	TPG	135	_	24	344	22	
	RPG	125	-	90	57	84	
	小計	1 115	-	902	1 625	609	
工業工程	SD	-	-	-	431	-	

	UG	115	_	-	226	150	
	TPG	23	-	-	-	48	
	RPG	10	_	-	16	23	
	小計	148	_	_	673	221	
機械工程	SD	_	-	-	419	_	
	UG	192	-	91	312	230	
	TPG	11	_	_	79	27	
	RPG	10	_	7	14	27	
	小計	213	_	98	824	284	
測量學	SD	248	_	_	220	_	
	UG	217	_	_	227	_	
	TPG	_	_	_	66	_	
	RPG	2	_	_	7	_	
	小計	467	_	_	520	_	
				B3	主校		
科目	程度	城大	浸大	中大	理大	科大	港大
其他工程學	SD	277	_	_	326	_	
	UG	380	_	321	328	_	
	TPG	232	_	_	66	14	
	RPG	26	_	25	10	_	
	小計	915	_	346	730	14	
生物科技	UG	_	_	_	58	_	
	TPG	_	_	_	13	13	
	RPG	_	_	_	_	_	
	小計	_	_	_	71	13	
	3 11				1 1	10	
紡織及服裝科技	SD	_	_	_	421	_	
193 11-90 10-C 11 C 2C 1 1 30-C	UG	_	_	_	176	_	
	RPG		_	_	14		
	小計						
	וםיני	_	_	_	611	_	
其他科技	SD		_		11		
元 IE 作汉		_	_	_		_	
	UG TPG	_	_	_	30 26	- 7	
					· / (-'	./	

# LEGISLATIVE COUNCIL — 26 June 1996

立法局	 <b>一</b> カカ	六年	六月	-+	六日
<u> </u>	,,,,	/ \ T	<i>,</i> , , ,	_	$\prime$ $\prime$ $\Box$

	RPG 小計		-	-		-		6 73		- 7		
工程及科技學科總計	SD		525	_		_	2	503		_		
	UG	1	759	_	1	200	2	432	1	339	1	518
	TPG		401	-		24		741		168		454
	RPG		173	-		122		164		171		169
	各個程度	2	858	-	1	346	5	840	1	678	2	141

# 註:

66

- (1) 由於港大是按學院收生,因此未備有每科學生人數資料。
- (2) 嶺南學院並無開設工程學院,但設有電腦學系,是商學院四個學系之一。嶺南學院工商管理學榮譽學士課程資訊系統學科的學生有118 名。

(3) SD - 學士學位以下程度課程

UG - 學士學位課程

TPG - 研究生修課課程

RPG - 研究生研究課程

附件B

# 持有工程學高級文憑/證書 或直接入讀二年級課程的學生人數

院校	工程學高級文憑/證書	直接入讀二年級課程
浸大	無	無
中大	無	無
嶺南	無	無
科大	25 (全日制)	1 (全日制)
港大	15 (全日制)	6 (全日制)
城大	116 (全日制)	87 (全日制)
	228 (兼讀制)	
理大	403(全日制及兼讀制)	53(全日制及兼讀制)

# Disparity in Penalties for Rape and Incest

- 18. 李華明議員問:根據現行法例,強姦罪的最高刑罰是終身監禁,但亂倫罪的最高刑罰只是入獄七年,除非受害人年齡在 13 歲以下,則屬例外。有見及此,政府可否告知本局:
  - (a) 過去三年,每年發生多少宗亂倫案件;
  - (b) 鑑於亂倫行為令受害人受到極大創傷,為何強姦罪與亂倫罪的 最高刑罰有此差距;及
  - (c) 會否檢討強姦罪及亂倫罪的罰則?

保安司答:主席先生,

(a) 過去三年,警方接報的亂倫案數目如下:

年份	亂倫案數目
一九九三	7
一九九四	7
一九九五	6

- 強姦罪的最高刑罰是終身監禁,這亦適用於被告與受害人有亂倫關 (b) 係,又屬於下述情況的個案:
  - (i) 受害人並不同意性交;及
  - (ii) 被告知悉受害人並不同意,或不理會事主是否同意。

此外,如果亂倫案的受害人年齡在13歲以下,則被告亦可被判最高 一 終身監禁。至於亂倫罪的最高刑罰監禁七年,只適用於 受害人已屆13歲或以上的情況。

(c) 我們認為強姦罪的最高刑罰是終身監禁,已屬恰當。我們正在檢討 一些性罪行,包括亂倫罪的最高罰則。

# **Singapore-Hong Kong Civil Service Exchange Programme**

- 19. **DR DAVID LI** asked: In view of the report that the Governments of Hong Kong and Singapore are exploring an exchange programme for civil servants of the two Governments, will the Government inform this Council:
  - of the objective of this exchange programme; (a)
  - *(b)* of the expected commencement date of the programme and its duration:
  - of the criteria to be adopted in selecting civil servants to participate (c) in the exchange programme; and

(d) whether the Hong Kong Government will consider expanding the exchange programme to include other countries?

**SECRETARY FOR THE CIVIL SERVICE**: Mr President, the Hong Kong and Singapore Civil Services have had initial discussions on a proposal for an exchange programme for civil servants. The objective of the programme is to enrich and broaden the exposure of the personnel employed in the respective civil service, and to enable cross fertilization of experience and expertise.

We are continuing discussion with the Singapore Civil Service on the details and the logistics of the exchange programme, including the commencement date, duration and criteria in selecting personnel. We hope that in a few months' time, we would be able to send the first civil servant from Hong Kong to the Singapore Civil Service.

The Hong Kong Civil Service have broadly similar exchange programmes with the Civil Service in Australia and Canada. These programmes bear the same objective as the one being proposed between Hong Kong and Singapore. We may consider exploring similar programmes with other Civil Services should we see merit in so doing.

# **Protection of Wages on Insolvency Fund Payments**

- 20. 梁耀忠議員問:政府可否告知本局:
  - (a) 在一九九五至九六年度,共有多少宗申請從破產欠薪保障基金 撥付特惠款項的個案,申請人所屬的行業分布如何;及
  - (b) 勞工處如何釐定該處在服務承諾中定下處理申請特惠款項所需 時間為四至十個星期;及在釐定該目標時,有否考慮申請人的 實際經濟情況?

#### 教育統籌司答:主席先生,

(a) 一九九五至九六年度,向破產欠薪保障基金申請特惠款項的個案共 有6 730宗。申請人所屬的行業分列如下:

行業	申請數目
製造	2 728
建造	183
批發/零售、進出口/飲食及酒店	2 806
金融及商業服務	213
個人服務	552
其他	248
總數	6 730

(b) 對於處理破產欠薪保障基金申請,勞工處的服務承諾是,在呈交僱 主清盤或破產具稟書後(如不入稟呈請,則在法律援助署建議發放 款項後)四至十星期內完成審查程序,向申請人發放特惠款項。

審查申請時,勞工處薪酬保障組須向申請人及其僱主搜集薪金及僱用紀錄、約見有關人士,以及查核申請人的索償理由是否屬實,然後才可發放特惠款項。完成以上步驟所需的時間因情況而異。在作出服務承諾時,勞工處考慮過實際的工作經驗,亦顧及有需要使申請人盡快得到援助。過去兩年,勞工處已簡化程序,並抽調更多人手處理申請。從破產欠薪保障基金撥出特惠款項平均所需時間,在一九九三至九四年度是呈交具稟書後六個月,到一九九四至九五年度已縮短至2.1個月。現時,申請人通常可於一個月內獲發特惠款項,這是很大的改進。

勞工處亦於一九九六年二月開始設立電話熱綫,幫助生活有困難的申請人。至目前為止,勞工處透過熱綫共接到30宗申請,其中20名申請人獲破產欠薪保障基金預支特惠款項。

## **MOTIONS**

#### BIRTHS AND DEATHS REGISTRATION ORDINANCE

# THE SECRETARY FOR SECURITY to move the following motion:

"That with effect from 15 July 1996 the Births and Deaths Registration Ordinance be amended -

- (a) in section 9(2), by repealing "\$110" and substituting "\$120";
- (b) in section 9(3), by repealing "\$540" and substituting "\$590";
- (c) in section 13(2), by repealing "\$110" and substituting "\$120";
- (d) in section 13(3), by repealing "\$340" and substituting "\$370";
- (e) in section 22(1), by repealing "\$110" and "\$220" and substituting "\$120" and "\$240" respectively;
- (f) in section 22(2), by repealing "\$110" and substituting "\$120";
- (g) in section 22(3), by repealing "\$540" and substituting "\$590";
- (h) in section 23, by repealing "\$55" and substituting "\$60";
- (i) in section 27(c), by repealing "\$340" and substituting "\$370"."

He said: Mr President, I move the first motion standing in my name on the Order Paper. This motion proposes increases in the fees specified in the Births and Deaths Registration Ordinance for the registration of births and related matters.

A recent review of fees and charges conducted by the Immigration Department indicates that there are three areas in the services delivered by the Department for which there is under-recovery of cost. These are: registration of persons services, where the average shortfall is about 12%; registration of births, deaths and marriages, where the average shortfall is about 19%; and issue of travel documents, where the average shortfall is about 43%.

It is government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services to which they relate. However, in order to minimize the impact which such increases may have on the general public, fee increases of 9% to 13% only are proposed for most services in this revision exercise. Details of all the fee increases were already tabled in this Council on 5 June 1996. The current and the two subsequent motions are concerned with fees for the registration of births, deaths and marriages.

The fees payable under the Births and Deaths Registration Ordinance were last revised in July 1995. We propose to revise them by 9%. In dollar terms, the actual increases range from \$5 to \$50. If approved, the new fees will be effective from 15 July this year.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

#### FOREIGN MARRIAGE ORDINANCE

## THE SECRETARY FOR SECURITY to move the following motion:

"That with effect from 15 July 1996 the Foreign Marriage Ordinance be amended -

- (a) in section 5, by repealing "\$55" and substituting "\$60";
- (b) in section 6, by repealing "\$540" and substituting "\$590"."

He said: Mr President, I move the second motion standing in my name on the Order Paper. It seeks to increase the fees specified in the Foreign Marriage Ordinance.

The Foreign Marriage Ordinance provides a means whereby a Commonwealth citizen can give a notice of marriage in Hong Kong, even though the marriage is to take place at a British Embassy abroad. Fees are payable for the issue of a certificate by the Registrar of Marriages. The fees were last revised in July 1995. It is now proposed to increase them from \$55 to \$60 for a certificate by the Registrar of Marriages given under section 5, and from \$540 to \$590 for a Governor's licence given under section 6 of this Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

### LEGITIMACY ORDINANCE

## THE SECRETARY FOR SECURITY to move the following motion:

"That with effect from 15 July 1996 the Schedule to the Legitimacy Ordinance be amended -

- (a) in paragraph 5, by repealing "\$270" and substituting "\$295";
- (b) in paragraph 6(1), by repealing "\$110" and substituting "\$120"."

He said: Mr President, I move the third motion standing in my name on the Order Paper. It seeks to increase the fees specified in the Schedule to the Legitimacy Ordinance.

The Legitimacy Ordinance provides for the re-registration of the births of legitimated persons. Fees collected relate to the re-registration of births and the issue of certified copies of entries of the birth of legitimated persons. The fees were last revised in July 1995. It is now proposed to revise the fees from \$270 to \$295 for re-registration of births, and from \$110 to \$120 for a certified copy of an entry of the birth in the register of births.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

## DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE

## THE SECRETARY FOR SECURITY to move the following motion:

"That the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1996, made by the Governor in Council on 4 June 1996, be approved."

He said: Mr President, I move the fourth motion standing in my name on the Order Paper.

The Drug Trafficking (Recovery of Proceeds) Ordinance has strengthened our ability to combat domestic and international drug trafficking, by providing us with the means to trace, restrain and confiscate the proceeds of drug trafficking. Section 28(1) of the Ordinance provides for the Governor in Council, with the approval of the Legislative Council, to designate countries and territories outside Hong Kong, so as to enable their confiscation and related orders to be enforced here; it also allows assistance to be provided in relation to their drug trafficking investigations.

Drug trafficking is an international problem and co-operation among governments in confiscating the proceeds of drug trafficking acts as a major deterrent. Hong Kong has already concluded agreements and arrangements with 11 other jurisdictions, which have all been designated under the Drug Trafficking (Recovery of Proceeds) Ordinance. As a result of such bilateral co-operation, about \$208 million worth of assets related to drug trafficking have been seized in Hong Kong.

We have recently initialled a similar agreement with the Kingdom of Thailand, concerning mutual assistance in the suppression of drug trafficking. The agreement will come into effect when it is signed by both Governments after they have notified each other that all the requirements for its entry into force have been completed. One of these requirements for Hong Kong is the designation of the Kingdom of Thailand under the Ordinance.

This resolution seeks this Council's approval of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1996, made by the Governor in Council on 4 June 1996. The amendment Order will add the Kingdom of Thailand to the list of designated territories, and so apply the provisions of the Ordinance to confiscation orders made by the courts in Thailand. Confiscation orders made by the Hong Kong courts will similarly be enforceable in Thailand on a reciprocal basis.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

## THE SECRETARY FOR SECURITY to move the following motion:

"That the Dangerous Drugs (Amendment) Regulation 1996, published as Legal Notice No. 191 of 1996 and laid on the table of the Legislative Council on 22 May 1996, be amended in section 4, by adding -

# "(d) by adding -

"(8) It is a defence for a person charged with committing an offence under paragraph (7) in relation to paragraph (1) to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence."."."

He said: Mr President, I move the fifth motion standing in my name on the Order Paper.

The Dangerous Drugs Regulations set out, *inter alia*, record-keeping requirements to be adhered to by an authorized person when supplying a dangerous drug. This is to ensure that full particulars of the acquisition and supply of dangerous drugs are recorded for monitoring purpose. As part of the Administration's efforts to tackle the problem of illicit sale of dangerous drugs, we have proposed to tighten the record-keeping requirements through the Dangerous Drugs (Amendment) Regulation 1996 which was tabled in this Council on 22 May 1996. One of the tightening measures proposed is to require the entering of the identity card number of the patient to whom dangerous drugs are supplied.

The proposal to include the patient's identity card number in the register is intended to provide a more reliable means of identifying the true identity of the patient to whom the dangerous drugs have been supplied, so as to facilitate investigations and law enforcement actions. It also serves to deter the patients from purposely providing false particulars and therefore offers better protection to doctors. It represents an improvement over the present arrangements whereby only the name and the address of the patient are required to be recorded.

However, concern has been expressed in the House Committee that there may be emergency situations or exceptional circumstances which make it impracticable for the authorized person to comply with the Regulation through

no fault of his own. To address this concern, we propose to add a statutory defence provision to the Dangerous Drugs (Amendment) Regulation 1996, to the effect that it will be a defence for an authorized person to satisfy the court that he has done everything reasonable and has exercised due diligence in the circumstances to comply with the law. We should also assure Members that the Government does not initiate prosecutions lightly. Not every technical breach of the record-keeping requirements will automatically result in a prosecution. The situation where innocent authorized persons are prosecuted for minor breaches through no fault of their own should not occur.

The motion before Members seeks this Council's approval by resolution of the proposed amendment to the Dangerous Drugs (Amendment) Regulation 1996. With the proposed amendment, authorized persons are accorded better protection in complying with the record-keeping requirements introduced in the Amendment Regulation.

Mr President, I beg to move.

Question on the motion proposed.

**DR LEONG CHE-HUNG**: Mr President, I rise to support the motion moved by the Secretary for Security for the proposed addition of a statutory defence provision on behalf of the medical and dental professions.

We all see the merits of proper record-keeping as a means to facilitate investigation and law enforcement action. Yet, it cannot be over-stressed that we have not addressed the problem of illicit drug-trafficking head-on. There are still too many incidents of a handful of despicable members of the medical profession who are peddling drugs under the good name of *bona fide* medical treatment which I am afraid this motion alone today can do little to condemn. The Administration must work hard to get to the root. There has to be a way to convict illicit drug-trafficking by those medical practitioners who act as drug peddlers and to properly punish them.

With those words, I support the motion.

Question on the motion put and agreed to.

### TRADING FUNDS ORDINANCE

## THE SECRETARY FOR WORKS to move the following motion:

"That with effect from 1 August 1996 -

- (a) on the recommendation of the Financial Secretary, the Electrical and Mechanical Services Trading Fund ("the trading fund") shall be established to manage and account for the operation of certain government services of the Electrical and Mechanical Services Department;
- (b) the services to be provided under the trading fund shall be those specified in Schedule 1;
- (c) the assets set out in column 2 of Schedule 2 shall, subject to any term specified opposite an asset in column 3 of that Schedule, be appropriated to the trading fund;
- (d) the net value of fixed assets of \$1,009.4 million appropriated to the trading fund shall be shown in the Capital Investment Fund -
  - (i) as to \$302.8 million, as a loan;
  - (ii) as to the balance, as a contribution of trading fund capital;
- (e) the loan referred to in paragraph (d)(i) -
  - (i) shall be repayable in 10 equal annual instalments of \$30.28 million each, the first such instalment to become due on 1 July 1997 and subsequent instalments being due on the anniversaries of that date;

(ii) shall, as to any balance unpaid, bear interest at a rate equal to the average of the best lending rate quoted by the continuing members of the Committee of The Hong Kong Association of Banks, such interest to be payable annually in arrears.

#### SCHEDULE 1

[para. (b)]

### SERVICES TO BE PROVIDED BY THE TRADING FUND

- 1. Operation and maintenance of electrical, mechanical, electronic and building services systems and equipment at major installations, such as office buildings, hospitals, airports and civic venues.
- 2. Maintenance of other electrical, mechanical, electronic and building services systems and equipment.
- 3. Maintenance of vehicle fleets.
- 4. Design, procurement, project management and other technical consultancy services in relation to electrical, mechanical and electronic systems and vehicle fleets.
- 5. Operation and maintenance of a refuse incineration plant.

### SCHEDULE 2

[para. (c)]

### **ASSETS**

Item Description

1. Office and depot buildings listed in Schedule 3.

Not to be disposed of without the prior approval of the Financial Secretary.

**Terms** 

2. All furniture and fixtures, equipment, computer systems and motor vehicles under the control of the Electrical and Mechanical Services Department and deployed towards the trading services as at 1 July 1996, as set out in the document marked "Inventory of Furniture Equipment and Motor Vehicles of the Electrical and Mechanical Services Trading Fund" kept by the Director of Electrical and Mechanical Services.

### SCHEDULE 3

[item 1, Sch. 2]

# OFFICE AND DEPOT BUILDINGS APPROPRIATED TO THE TRADING FUND

	Name of Office and Depot Buildings	Location
1.	Electrical and Mechanical Services Trading Fund Offices	98 Caroline Hill Road (excluding 6/F, 7/F and 10/F)
2.	Caroline Hill Depot, Workshop and ATC Building	Rear of 98 Caroline Hill Road
3.	Sung Wong Toi Depot and Workshop	120 Ma Tau Kok Road, Kowloon
4.	Fan Garden Depot, Fanling	Jockey Club Road, Fan Garden, Fanling

5. Mui Wo, Lantau Depot

3 Wan Chai, Mui Wo, Lantau

Island

6. Kowloon Bay Depot

Cheung Yip Street, Kowloon

7. Land for depot at Tin Sui Wai

Tin Tan Street, Tin Sui Wai."

工務司致辭:主席先生,我謹依照議事程序表,提出我名下的議案。

本局在一九九三年通過《營運基金條例》,使政府某些服務可藉特別的 安排而籌集經費和進行管理。設立營運基金,可確保提供具成效和有效率的 服務,及須就這些服務向公眾交代,而從中所得的收益,亦足以應付服務本 身的開支及有關債務。

我現按照《營運基金條例》第3(1)條的規定,動議在機電工程署設立機電工程營運基金。

建議設立的營運基金,須對機電工程署的運作進行管理及核算,但為執行規管而提供的服務則不包括在內。該署根據營運基金提供的服務計有:電力、電子、機械及屋字裝備的操作、監察及維修保養;為這些服務提供設計、採購、計劃管理及技術方面的顧問服務;以及提供車輛維修、廢物焚化和處理裝置的操作及維修等服務。

設立這個營運基金後,機電工程署會訂定目標,希望能為顧客提供優質服務,使服務既具成本效益,亦安全可靠;該署亦會不斷檢討營運基金服務的市場情況,開拓發展業務的機會;並會提供適當的環境,讓機電工程署人員可不斷改善服務效率,使顧客對服務更感滿意。

主席先生,各位議員或已知悉,在機電工程營運基金設立後首三年,各政府部門和法定機構仍須繼續使用機電工程署的服務,但這種服務掛鈎的安排會在其後三年逐步取消。在較早前的財經事務委員會和專責研究本建議的小組委員會會議席上,部分成員對這項安排能否有效改善機電工程署的服務效率表示關注。主席先生,自從一九九二年四月對多項服務實施營運服務帳目的安排後,該署的服務效率已顯著提高。上述為時三年的過渡期,只是給予機電工程署所需的時間,繼續改善其服務和運作方式,俾能作好準備,在取消現時的服務掛釣規定後,直接與私營機構競爭。對於作為機電工程營運基金顧客的法定機構而言,此舉可免所提供的服務或機構本身的運作,受到太大影響。在這段過渡期內,機電工程署會努力不懈,盡快作出所需的改

善,確保現有的顧客滿意機電工程營運基金的服務,縱使在取消這項掛鈎安排後,仍會繼續使用其服務。

為了減輕員工對引進機電工程營運基金可能引致出現冗員的憂慮,我們 已經向員工作出保證,他們不會因為設立機電工程營運基金而直接變成冗 員,引致被迫退休。這項保證已經獲得員工接納及支持。

機電工程營運基金總經理和本人會負上全責,確保營運基金能提供有效率和具成效的服務,並符合所需的服務水準。我深信機電工程營運基金必能合乎上述需求。因此,主席先生,我現根據《營運基金條例》第3(1)條的規定,建議按照提交本局審議的決議案所列條款,設立機電工程營運基金。

主席先生,我謹此動議議案。

Question on the motion proposed.

**DR SAMUEL WONG**: Mr President, I rise to speak in my capacity as the Chairman of the Subcommittee on the resolution under sections 3, 4 and 6 of the Trading Funds Ordinance, Electrical and Mechanical Services Trading Fund (EMSTF).

In the last few weeks, the Subcommittee had held four meetings including three with the Administration to examine the resolution. The Subcommittee has also received seven staff unions and associations who are concerned about the subject. In the course of deliberation, members of the Subcommittee have examined several issues. I shall touch upon the major ones in my following speech.

Members of the Subcommittee have queried the reasons for setting up the EMSTF. Unlike the current five trading funds which provide monopolistic services to members of the public, Electrical and Mechanical Services Department (EMSD) acts as a service provider to government departments and to agencies, and the majority of its services are easily available in the private sector. The Administration has explained that EMSD in fact starts charging other government agencies for its services under the Operating Services Account (OSA) set up in 1992 and the system has operated with satisfactory results. However, under the OSA, MESD remains fully tied to all government procedures including

the need to bid for resources under the resources allocation system. OSA, hence, does not have the flexibility to quickly meet customers' needs like the commercial sector. The Administration has emphasized that only by setting up the EMSTF, EMSD will be in the best position to provide customer-led, efficient and cost-effective services. Members of the Subcommittee, however, are not convinced that the efficiency and cost-effectiveness of EMSD can only be optimized under the trading fund arrangement.

The second issue considered by the Subcommittee is the proposal to introduce a three-year protection period upon the establishment of the EMSTF during which government departments are required to continue to use EMSD's After this period, departments will be gradually permitted to choose alternative suppliers under a phased "untying" programme which will take a further three years to complete. Some members of the Subcommittee have doubted the reasons for a protection period. Unless EMSD is operating below the standard comparable to the commercial sector, there should not be any need to shield it from direct competition straightaway. The Administration had explained that there is already pressure from some EMSD customers to untie, but it is not yet the right time for direct competition. EMSD should be allowed some time to adjust to the changes in the system of operation and culture under the trading fund arrangement and to make necessary productivity improvements. Without the protection period, client departments, which are not yet equipped with the necessary skills to choose service suppliers, may use unregulated Safety standards and service reliability could be causes for concern. **Notwithstanding** Administration's explanations, of the members Subcommittee are of the view that the necessity for a three-year protection period is an indirect admission of EMSD's inability to compete favourably now with the private sector service providers. However, members note EMSD's current programme of initiative to improve services to match the private sector.

The financial viability of the EMSTF has also been considered by the Subcommittee. Although the Administration repeatedly assures members that projected financial performance of the EMSTF is good and that there are different measures to ease any short-term cashflow problem such as using accumulated surplus, rescheduling the loan repayments to the Government and not distributing dividends to the Government, in members' view, the Administration has been over-optimistic in its business projections. Once government departments are not obliged to use EMSFT's services, EMSD will

inevitably lose some of its businesses. It is unrealistic to assume that its businesses will not be significantly affected upon untying. As a matter of fact, the findings of surveys on clients' feedback conducted by outside consultancy firms on behalf of EMSD indicate that EMSD's services need improvement in "value for money".

Last but not least, the Subcommittee has carefully considered the concerns raised by the staff associations and unions. The staff associations are gravely concerned about the possibility of redundancy. I understand that the Administration has already assured staff that they will not be made redundant or to accept compulsory retirement under the trading fund. This assurance was reconfirmed yesterday and was considered acceptable by staff.

Having carefully examined the Administration's information and the views of staff associations and unions, the Subcommittee considers that the Administration should review the operation of the existing trading funds before introducing a new one. Hence, the Subcommittee at its last meeting, arrived at the decision that the resolution could be supported. Thank you.

陳鑑林議員致辭:主席先生,民建聯是反對政府在現階段成立機電工程營運基金,其中機電工程署工會及員工對於前景的擔憂,固然是我們考慮的原因之一,但更重要的是,政府根本就無法在現時清楚說明成立營運基金的真正目的,以及釋除本局議員及工會對營運基金前景的疑慮。本人雖然獲悉政府已與有關職工會進行商討,並承諾員工的就業問題不會受到營運基金前景的影響,但據我們了解,絕大部分職工會仍然對此存有疑慮。

我們認為,港府應該立即全面檢討現行五個營運基金的經營和運作情況,而在檢討結果完成前,停止成立新的營運基金。

港府屢次強調,"根據目前對新增活動及新增業務的預測,機電工程營運基金不可能出現在財政上不可行的情況",甚至形容營運基金的前景是一片光明,更無疑是港府在議員及工會面前展現一道繽紛的彩虹,但我認為這道彩虹並不切實際,以及隨時會幻滅的。

港府一方面基於樂觀態度及一廂情願的預測及假設,強調機電工程營運基金不會出現財政上的不可行情況,但另一方面又拒絕承諾一旦證實營運基金不可行,會恢復以現行的申請撥款方式運作;同時,又預計在解除專利保

護後,如果營運基金失去20%的業務,將須流失約900名員工,而新業務的增長亦只及現有工作量的1%,因此,工會及員工的擔憂,是完全有理由的。此外,機電工程營運基金的業務計劃中提到,每年均實施一項新的收費政策,令盈餘佔總營業額的4.5%;但以收費政策來達到一定盈利額的目標,只會削弱機電工程署的競爭力,而令業務進一步流失,結果只有繼續大幅加價,造成惡性循環。

政府認為,成立機電工程營運基金的目的是要改善機電工程署的服務質素,提高其生產力及成本效益。我認為這不應只是機電工程署的目標,而應該是所有政府部門共同的目標,但要改善政府部門的服務及提高生產能力,是否一定要商營化?難道其他未有計劃成立營運基金的政府部門就無須提高服務質素,又或無法提高服務質素?

事實上,機電工程署自九二年開始,已將部分服務透過營運服務帳目的 安排收費,而據政府所說,該制度的運作成績理想,且生產力及效率均顯著 提高,既然如此,政府可以繼續採用現在的安排,以提高其他部門的效率。 但政府認為,成立營運基金,可以令機電工程署無須全面依循政府的工作程 序,包括無須根據資源分配制度爭取資源,只須每年向財政司匯報及向立法 局呈交帳目,可以有更大的靈活性。

我非常質疑政府所謂的靈活性,其實只是使營運基金的撥款,無須經立 法局財務委員會通過,而是繞過本局的監察。雖然營運基金須每年將帳目呈 交本局,但當我們發現有問題的時候,往往已經是事過境遷,米已成炊!

作為一個負責任的政府,其責任就是要按照社會的需要,合理公平地分配財政資源,為市民提供優良的服務,否則,豈非所有為市民提供服務的政府部門,如果不改為以營運基金運作,就不能夠提高服務質素?這一點我們是不能夠同意的。我們一直都很重視公務員制度為管理社會事務的高效率和貢獻,可惜港府卻正在改變這種制度。

以港府自九三年起根據《營運基金條例》成立的五個營運基金為例,包括:土地註冊、公司註冊、污水處理、電訊管理及郵政局,雖然仍然屬於提供專利服務的部門,這些營運基金不但未能達到原來的目標,而且更是問題 叢生,尤其是污水處理服務營運基金及郵政署營運基金。

因此,既然港府認為,機電工程署成立營運基金是可以加強競爭力,則無須給予三年的專利保護,因為此舉無疑是間接承認機電工程營運基金無能力與其他私營服務機構競爭;而當機電工程營運基金三年後開始面對市場競爭時,其前景是否有如港府描述的"一片光明",實在令人質疑。

機電工程營運基金無疑就像一個計時炸彈,我們認為三年之後這個計時 炸彈便會定時爆炸。

主席先生,本人謹此陳辭。

張炳良議員致辭:主席先生,機電工程營運基金的成立,適值是其他營運基金隱現問題的時候。工務司在今天提出的有關議案,遭受員工方面的強烈反應,現在確有必要就營運基金這個問題作出比較全面的討論。

成立營運基金的精神原是可取的,即採納市場的經營方式,包括通過引入競爭,提高某些政府部門的營運效率,使它們面向市場,並尋求成本效益。當然,實行營運基金的政府部門亦應只針對具商業營運性質的活動及服務的部門。現時政府部門成立的營運基金,總括而言,可以分成兩類:

- (1) 壟斷性營運基金:這類營運基金的業務本身在市場上沒有競爭對 手,可以稱之為獨市生意,當中的例子包括有公司註冊處、土地註 冊處以及污水服務營運基金。
- (2) 競爭性營運基金:這類營運基金的業務是與市場的同類型服務互相 競爭。設立的目的是要透過引入競爭,使有關部門能夠直接面向市 場,通過市場的競爭壓力來提高效率。

怎樣令這些營運基金通過一些機制,達到提高效率的目的?看來政府是 用兩個方法:

(1) 回報率:這個做法,是因應部門的商業性質,設定回報率,並要求該部門透過指定的指標,達致提高效益的作用。但由於營運基金的部門要達致這些指標,就要作出業務上和成本結構上的調整。

(2) 給予有關部門管理的自主性:這令營運基金本身在資源運用上相對 地較有彈性,使部門能夠依據本身的業務性質及發展需要而作出調 整,包括抽調人手、購置合適的資本用品等,以達到回報率設下的 指標和擴大營業額。

就壟斷性的營運基金來說,政府在設定回報率及給予管理上的自主性,理論上可以調動部門的積極性,提高效率。但對於消費者來說,這個營運基金可能會造成過分追逐回報率,使部門以通過加價的手段來達到目的,這樣就對消費者不利。

對於員工來說,壟斷性的營運基金由於沒有競爭者,沒有即時面對市場競爭的威脅,因此沒有受到要即時"減磅",削減人手的壓力。但是,競爭性的營運基金的情況則不同,它是通過市場的競爭,來達到提高效率的目標,因此,是通過消費者的選擇來決定營運基金的營運能力。由於同時有回報率的壓力,如果這類營運基金缺乏競爭力的話,既然開不了源,就要節流,包括減省人手。

現時建議的機電工程營運基金就是屬於競爭性營運基金,因此,機電工程署員工對於這個營運基金的設立產生憂慮,是完全可以理解的。員工的憂慮,是擔心在開放競爭下,成為"節流"的對象;也擔心將來機電工程署缺乏競爭力,不能真正面對市場。

對於員工第一方面的憂慮,經過一番爭議,我們看到政府方面最後作出了一些承諾。工務司在昨天去信予有關工會時承諾,不會因為設立營運基金,而強迫員工提早退休或遣散;而另一方面,我們看到在機電工程營運基金成立的頭三年,政府部門與法定機構,例如市政局、區域市政局及醫院管理局仍會繼續採用機電工程署的服務,在業務方面會得到保證,以紓緩市場競爭的壓力。通過這三年的業務保障,希望機電工程署可以作出恰當的業務策略和資源調整,確保以後這些保障逐步失去時,能夠有足夠的能力在市場競爭。在這兩點主要疑慮得到政府的一定保證之下,民主黨是願意支持這次機電工程營運基金的設立。稍後我的同事單件偕議員會就此作出補充。

但是,從今次公眾和員工對機電工程署成立營運基金所表達的不安和關注,反映了他們對整個營運基金模式的保留。市民對營運基金部門的擔心,不單止是因為營運的效率問題,又或是面向市場的問題,而是如何確保一些壟斷性的營運基金,如何不會為了追逐政府所定的高回報率而動輒加價;又或如何制訂合理的回報率。沒有一套例如價格管制,又或是利潤管制等的模式,而這些又是獨市生意時,究竟對消費者利益的保障為何呢?另一方面,

我們都看到,很多時候這些營運基金在制訂回報率時,經常會出現修改的情況,在加價時就受到公眾的強烈批評。例如污水處理服務營運基金,將環境保護的概念"污染者自付"簡化為透過這個營運基金單純的"收回成本"的會計概念,市場不單止不能夠透過這個營運基金理解當中的環保概念,反而只是看到政府要動輒加價,加重他們生活的負擔。

市場也好,員工也好,往往對政府成立營運基金,未見其利,先見其害,他們感受不到政府背後實施營運基金,提高效率以服務市民的精神,只會感到政府部門想利用一些手法來達到大幅加價或裁減員工開支的目的。

我們認為,機電工程營運基金的建議引來員工的強烈憂慮,正好顯示政府的事先部署措施缺乏周詳。一些外國國家在把國營企業私有化前,會首先整頓好有關國營企業內部的營運和成本結構,使它們具有競爭力後,才將它們上市吸引投資者。當然,設立營運基金不等同私有化,但當中的道理是一樣的。希望政府在日後成立營運基金前,要先做好有效的整頓措施,才評估實施營運基金的可行性。

事實上,政府在設立機電工程營運基金及其他營運基金的時候,往往存在角色重疊的問題。政府既是員工的僱主,又是營運基金的投資者,又同時是服務管理人,角色多重,顧此失彼。人們容易懷疑,政府在考慮部門是否合適成立營運基金的時候,會否為了盡快"脫手",而過分高估其市場競爭力和回報率,而報喜不報憂呢?

我們認為,日後政府提出成立營運基金時,一定要提供全面及準確的論據。為避免政府角色重疊,最佳的方法是由獨立的財務顧問公司,就希望成立營運基金的部門作出公正及客觀的評估,確保該部門有足夠的商業競爭、收回成本或盈利的條件。另外,要在實施營運基金之前,作出適當的過渡安排,確保資源及管理方面能夠得到充分的理順,使員工有充足的準備去迎接新的安排。如果在上述方面做得不足,日後政府在推行營運基金的時候,相信很難會取得市場及公眾的廣泛支持。

本人謹此陳辭。

MR RONALD ARCULLI: Mr President, I wish to offer several comments on the proposal to establish the Electrical and Mechanical Services Trading Fund. I was the Liberal Party's representative on the Subcommittee established by the House Committee to examine the proposal. The Electrical and Mechanical Services Department(EMSD) provided the Subcommittee with extensive material on the justification for the establishment of a trading fund for its continued operation. Staff of the department was most concerned about their employment, which is quite understandable. They sought the assurance of the Government that they would not be made redundant. From explanations given to me both in and outside of the Subcommittee, the assurance sought by staff has been given by the Secretary for Works. We believe that the staff's concern has been satisfactorily addressed.

Secondly, the Liberal Party has re-examined the trading fund concept and one disturbing factor has surfaced. We notice that in setting up a trading fund, the Administration, has actually established their terms upon which they ought to do so, which include firstly a predetermined rate of return based on the assets of the fund; secondly, charging the relevant fund interest on the loan advanced at prime rate. We are concerned that in established trading funds, the Administration should avoid creating another way for the Administration to rake funds into the public purse. Thus, setting a predetermined rate of return and charging an interest rate far in excess of what the Treasury is able to earn on our fiscal reserves, the Administration may thus be creating a profit centre rather than encouraging efficiency.

In this connection, the lower the cost of borrowings, obviously the lower would be the cost of the services provided, and I have been advised by EMSD that it will be permitted by the Finance Branch to actually borrow money from the commercial banking sector instead of from the Government, which I am sure would be at a lower and therefore cheaper cost to the fund.

Mr President, whilst the Liberal Party supports the proposal before this Council today, we want to put down a very clear marker as to our concerns about the continued operation of existing, or indeed, the future, establishment of any trading fund. Thank you.

鄭耀棠議員致辭:主席先生,一個能成功推行的營運基金,先決條件之一是,參與者都有信心地積極投入,不然的話,儘管推行者說如何有信心,前景如何一片光明,如何前途似錦,都不能消除參與者的憂慮。就以今次受營運基金影響的4 080名機電工程署的員工為例,他們有三千七百多名員工聯名強烈要求政府暫緩在他們的部門推行營運基金。他們擔心的是,機電工程

署本來是政府的後勤支援,為其他部門提供汽車維修、屋宇設備系統、儀器 的維修,包括醫院、機場等機電工程。但是機電工程營運基金在運作三年 後,和其他政府部門"解除連繫",也就是說本來"幫襯"機電工程署的政 府部門,在三年後可以自由挑選提供供應機電服務的公司,他們不一定要 "幫襯"機電工程署。三年的期限,正如員工所說,只不過是"吊三年鹽 水"罷了。機電工程署要和其他私營公司一起競爭,而競爭是要講實力的。 講到實力,機電工程署的營運基金就不及其餘的營運基金了,因為其餘的營 運基金都具備獨市生意的實力(例如郵政署、公司註冊處等),但機電工程 署就沒有這種雄厚的實力。此外,前五個的營運基金在回報率方面亦未能達 至目標,例如公司註冊處的目標回報率是10%,但九四年的實際回報率只有 6.2%,九五年8.1%,未達目標。郵政署營運基金的目標回報率本為12%,但 已修訂為10.5%,估計到九七年,也只有7.6%的實際回報率。至於污水處理 服務營運基金的目標回報和實質回報的差異,也不用在這裏多說,大家都很 清楚。五個營運基金中有三個的回報率不達目標,這些得天獨厚的營運基 金,尚且如此,試問機電工程營運基金在"成行成市"的機電工程行列中,如 何能實現政府所訂下15%的目標回報率呢?

員工擔心一旦成立了營運基金,因競爭力不足,以致業務縮減,不能 在市場上生存,最終導致營運基金完全轉為私營,又或是要大量注資來維持,又或是政府採取不積極、不干預政策,讓機電工程營運基金自生自滅。 無論如何,最終受害的只是員工,讓他們自然流失,就等於自然流入失業市場。

基於上述情況,本人希望政府應將其餘五個營運基金作一個全面有系統的檢討,暫緩推行機電工程營運基金,以便有較多時間與受影響的員工,進行探討推行營運基金的可行性,藉以建立信心,減少員工對職業前景不明朗的憂慮。

主席先生,本人謹此陳辭,反對議案。

李卓人議員致辭:主席先生,我反對政府這項議案,並非因為員工的疑慮,而是對整個政府部門的服務質素存有疑慮。剛才陳鑑林議員說他不清楚政府的真正目的,但我覺得根本很明顯,工務司鄺漢生先生也提過,其實是因為在三年後,就會取消政府部門和法定機構仍須繼續使用機電工程署提供的服務,這項掛鈎服務將會被取消。掛鈎服務在三年後取消之後,即是說將會任由機電工程署自生自滅。如果是這樣的話,政府部門日後的工作便可以隨意"外判"。問題在於大家是否相信這些"外判"判頭的工作質素較政府的機

電工程署為佳。我不是盲目相信政府是永遠做得最好的,但我相信一點,就是政府必須向公眾交代,所以會做得較為妥當及穩當。這是因為政府不會為了爭取某一宗生意,而將貨就價。但是,如果私人機構為要爭取一宗生意,它就可能會將貨就價,例如政府日後將工作"外判"給其他公司投標時,一些判頭為了爭取生意,可能會將一些舊零件代替本來應該採用的較昂貴零件。那些舊零件當然較為便宜,但政府會否這樣做呢?政府在爭取生意時,會否在計算價格時採用一些舊零件?政府是不會採用這種方法的。因此,我最擔心的是,而較早前很多議員也提出一點質疑,就是"外判"的工作會否影響政府的服務質素?工作"外判"後,私人機構會否使用一些廉價、技術較低的勞工,因而使有關的服務質素下降?因此,我們認為這個問題並非在於員工是否有疑慮,而是在於工作"外判"後,整個政府部門日後的維修工作質素會變成怎樣?

同時,在這個"外判"制度下,日後要機電工程署與私人機構競爭,我認為是不切實際的。這就有如大笨象與羚羊競跑。現時機電工程署可說是"將軍"多多,是一隻"大笨象",它的上層行政架構必然較外間的私營公司膨脹。試問機電工程署怎樣能與那些公司競爭?政府較早前更說要機電工程署有一定的回報率,我認為這簡直是夢話。機電工程署怎樣能夠與私人判頭競爭?現時機電工程署已是一隻"大笨象"。

較早前也有議員指出,這是一個具競爭性的市場,有別於其他部門的營運基金。例如郵政局,基本上已經壟斷郵票的市場,當然,在包裹方面,特別是DHL方面會有競爭市場,但基本上這也是一個較為保護的市場。然而,機電工程署所面對的,卻肯定不是這種情況,機電工程署必須在外間的市場與很多私人機構作出劇烈的競爭。因此,如果推行這營運基金,推行這種"外判"制度,我估計最終是日後政府部門所接受的維修服務質素將會不保,這令我十分擔心。舉例來說,如果日後有醫院停電,慢點兒進行維修是不可能的,如果由政府部門處理,我認為會較為穩當;又例如如果機場有事故發生,慢了處理,又或技術較差,那怎麼辦呢?因此,我們應從"外判"制度會否影響政府部門本身的運作及對市民的服務質素這角度來考慮。

同時,"外判"的另一個必然得出的結果是機電工程署肯定會萎縮,甚至乎最後會"執笠"。雖然工務司現時對員工作出保證,說員工無須擔心有裁員的情況出現,但我相信員工會擔心屆時會被迫轉職。在這問題上,你們可說員工的"飯碗"可保,但我認為除了"飯碗"外,還有尊嚴的問題。我們現時好像已否定機電工程署所有員工過往多年來對香港的服務,又或認為他們的薪酬過高。因此,我希望大家再考慮這問題。

民主黨較早前提到員工的疑慮可獲解決,但我始終認為還有一個疑慮不知怎樣解決。為何我們不質疑這個 "外判" 制度對政府來說是否最好的?如果 "外判" 制度是對政府好的話,就可能應該成立營運基金,甚至乎將機電工程署私營化。如果我們在開首時便質疑政府部門的維修工作應否 "外判" 這問題,則整件事即需要從新討論。因此,我認為我們宜就政府應否將其維修和保養工作全部 "外判" 這問題多作討論。

於此,我要提出一點,就是現時營運基金好像已成為一種趨勢,但我認為香港政府及本局應全面檢討所有營運基金的情況;同時,政府應告知議員,現時計劃還有多少部門將會轉為營運基金運作。我們希望能獲得這些資料,作出準備。

最後,我希望指出,我們不應盲目崇拜私營化,我認為始終有些服務是 由政府負責提供會較好的。

謝謝主席先生。

MRS ELIZABETH WONG: Mr President, a trading fund can only be implemented successfully if it has the full support of the staff involved. Whilst recognizing that the Government has done a lot to explain to the staff side the necessity to introduce the trading fund concept to the Electrical and Mechanical Services Department(EMSD), it does appear to me that not enough has been done to alleviate the many staff concerns that still remain.

Without wishing to add to the points already made by Honourable Members in this Council, I can say with a great deal of sincerity that, from the representations received by me from some 11 staff unions, it would appear that whilst they are not opposed to the principle of the trading fund concept as such, they have many concerns that have yet to be addressed. They would like to go with the management together to implement the trading fund with confidence to ensure successful implementation and maintaining safety and good standards.

It is relevant to point out that over 80% of EMSD staff have supported a signature campaign organized by the unions objecting to the haste with which the Government has decided to implement the Electrical and Mechanical Services Trading Fund. The unions are not demanding more pay. They are not

demanding better conditions. But they are genuinely concerned about upholding standards, upholding safety standards, about long-term viability and certainty in the successful implementation of this trading fund.

They pointed out to me that, although about 35% of the EMSD's operations had been tried under the Operational Services Account (OSA), it would be desirable to continue a little longer with OSA practices to test and assess and adopt the remaining 65% of the operations which are not comparable to the former.

The unions are also concerned that client departments have not been adequately consulted to assess fully their needs and thus their future relationship with EMSD after turning into trading fund operations.

The union representatives have advised me that it will be important to have an inter-departmental confidence-building consultation committee with Finance Branch representatives. I think the formation of such a consultation committee would enable all sides to come together to study and resolve the various concerns already expressed and fully understood.

I therefore support the staff-side position and appeal to the management for a little more time to be accorded to this issue to deal with the outstanding staff concerns. I think if we were to introduce the resolution today, it would be peremptory and therefore I do not support the resolution at this juncture.

任善寧議員致辭:主席先生,機電工程營運基金理論上非常可行,但真正實行時會面臨很大的問題,因為機電工程署現有業務一旦開放,會有兩類公司用惡性競爭的形式來搶生意,一類是中小型公司願意以"蝕頭注"的方式先將客戶搶於手中,然後再以成本低而水準較差的服務質素,慢慢賺回第一筆生意所虧蝕的錢。假如這些低質服務影響公眾安全,便後果堪虞,例如以"水貨"汽車零件裝於救護車上,或以較差的電綫接駁消防局的電鐘。另一類則是上市公司為求銷售額的增長,而以低價競爭,結果亦同樣以較成本、較低質素的服務交貨,這種商業上旁門左道的方式,不會在政府估計之內。所以機電工程營運基金一旦成立,便會馬上流失很多生意,何況由於政府定下除稅及利息後要有13.5%的回報率,令很多現有服務將來都要增加收費,新的基金可謂"兩面受敵";而政府只評估了機電工程署現行35%的業務,認為可以商業模式收費,但其他65%尚未評估,便急於成立基金,這是 務於倉卒的。猶如一個尚未學會游泳的小孩子,政府只教他學會游泳技術的

三分之一,在他身上加上金屬鉛塊,便推他下水,想不淹沒也難矣。

另一方面,當上述的私營公司以貨就價提供服務時,可能使很多設施故障率增高。假如故障發生在醫院手術房、機場控制塔等重要地方,會對市民造成很大的影響。這些重要地方的機電服務,應該讓機電工程署擁有專利,以確保公眾安全不受影響。其實,已成立的五個營運基金均擁有專利性質的業務,但機電工程營運基金則沒有這種專利,而事實上,為了公眾安全或職工的工作安全,政府應賦予機電工程營運基金多種專利權,但這尚需要一段時間去評估及定案,故現時成立基金,為時尚早。

本人謹此陳辭,反對議案。

謝謝主席先生。

陳婉嫻議員致辭:主席先生,剛才我的同事鄭耀棠議員已經提過員工的憂慮,我現在集中回應有關競爭能力的問題。

我們工聯會認為,現在機電工程署成立營運基金,是運用以偏蓋全的道理,並且考慮不周。我們相信將來在整個運作中,可能會出現很多問題。正如剛才審議小組委員會主席說,我們在討論時,政府提及一個中心問題,就是政府認為現時機電工程署本身出現了效率及成本效益的問題,但我們提出的問題是,如果政府要解決這問題,是否只單靠實行營運基金便可解決?事實上,如果政府真的要改革整個管理以達到成本效益的話,其實還有很多方法可做,但在討論過程中,政府在這問題上沒有正面回答我們,只是將局部的理由或現象告訴我們。事實上,目前機電工程署要提高效率,已經實行了營運帳目,即以前政府替人進行維修,並沒有數計,但現在已經向對口的政府部門收取費用。從現時實行營運帳目的大約35%業務的情況來看,由於這個做法令他們必須與對口的服務機構講求成本的問題,所以生意自然減少,促使管方面對生意額收縮的變化。

我覺得這帶出了一個信息,就是通過這方法可以提高效率,這是一個問題。我們的問題是,既然政府已經實施營運帳目,為何餘下的65%業務不繼續實行下去?為何在實行時要改變做法呢?政府解釋說這做法的前景是一片光明,但正如我剛才所說,在一片光明之下其實有很多隱憂。政府如何面對那些隱憂呢?他們又不能回答我們。因此,既然現正實施營運帳目,為何政府不繼續做下去呢?此外,我們亦質疑,在提高效率方面,除了剛才所說的

辦法外,是否還有其他辦法?員工也提出意見,建議可以將現行架構改變。我們與一些員工代表商談時,討論到如果在整個架構內,政府願意在管理階層做一些工夫,我們相信一定會提高現時的效率。因此,我們看不到政府有何充分理由告訴我們一定要成立營運基金。事實上,成立一個營運基金,正如剛才局內很多同事說,並不等於改善了效率,也不等於會更靈活。在這些問題上,我們一直有所質疑。

在我們與員工的接觸中,也看到另一個問題。如果按照政府所說,成立營運基金是為了靈活性,但我們從政府提供的數字,可見政府規限了將來的營運基金需要每年給予4,000萬元貸款及利息給政府這個大債主,即是說無論營運基金如何實行,也要定期給政府利息。假如政府要鼓勵其發展,這些情況又怎能自圓其說,說可以使整個機電工程署將來有更大靈活性呢?當這種具體情況顯現出來後,我就不相信實行營運基金後,機電工程署將來會一片光明;將來便得救;將來的效率會更好。當我們問政府一些具體問題時,它卻沒有回答。

主席先生,雖然最近審議小組委員會提出一系列問題,但政府都沒有答覆我們。我們在提出問題時,也將員工的意見告知他們。昨天工務司承諾員工可以"免炒",他覺得"免炒"是一個很重要的問題。當然,對員工來說,這是很重要的。雖然這個問題已經解決,但政府仍不能回應我們怎樣可以提高效率;怎樣使它更靈活;如何令它更有競爭能力。我看不到如何做得到。因此,我在這裏呼籲局內同事應該暫時不支持政府這項成立營運基金的建議,要好像剛才民主黨所說,待它全部在運作上成熟後才做。因此,我希望民主黨的同事能按照你們的理念,今天反對政府這項成立營運基金的建議,待它有了一個完善的方法後才再實施。

主席先生,我反對政府今天的議案。

單仲偕議員致辭:主席先生,營運基金成立的目的是提高部門的效率;在資源的運用、調配更靈活及有彈性方面,能藉着這個方法,可以改善服務的質素;在顧客為主方面,令服務水平得以改善;在收費方面,將具競爭能力。在機電工程署成立營運基金的概念上,民主黨是支持的,並希望它能成功地做得到。

機電工程署的員工一直都強烈反對機電工程署轉以營運基金運作,原因是他們有幾個重大憂慮。第一,他們擔心員工會被迫裁減。在剛過去的星期一,我曾與11個工會的員工代表到工務科、財務科和公務員事務科商討有關工會的憂慮。昨天工務科與工會進行馬拉松式討論,工會得到工務科一些初步更積極的保證,對員工的就業方面亦作出了保證。工務司也曾發出一封信,保證機電工程署在營運基金投入運作後,現任員工將不會被迫退休或遣散,但當有必要時,員工需要接受重新調配工作或再培訓。這個保證可以消除部分員工的憂慮。本人盼望在員工的支持及努力下,可以改善機電工程署日後的運作,使政府其他部門和市民大眾有更好的服務質素。

不過,我們必須正視員工和工會方面還有三個非常憂慮和關注之處。第一,是恢復員工信心;第二,確定長期穩定性的業務;制訂維修標準和確保服務的質素。民主黨非常支持工會所表達的關注之處。事實上,員工的信心、穩定和長期性的業務,以及一些維修標準和服務質素,讓其他部門有所遵循,我們覺得是有需要的。這可以令機電工程營運基金在長遠而言,有一個發展的前景。

雖然民主黨支持機電工程署成立營運基金,但我們覺得政府在整個業務計劃或財務安排上,出現較為樂觀的情況。第一,他們將目標回報率訂為13.5%,我們認為太高。事實上,成立營運基金最終的目的是改善部門的效率,更靈活地運用有效的資源,目的不是令機電工程署可以賺大錢。如果因為要賺錢而令機電工程署收費過高,會削弱了其競爭能力。因此,我們希望政府重新考慮這個回報率。

第二,政府又要求機電工程營運基金在九七年開始支付股息及償還貸款,預計兩筆開支合共港幣6,430萬元。我們實在擔心機電工程署轉以營運基金運作後的業務評估過於樂觀,儼如機電工程署一成立營運基金後便可以賺大錢,但是事實卻並非如此樂觀。機電工程署要在三年後面對市場的競爭,所以我們認為在將來要面對競爭的情況下,機電工程署首三年實在要有更大的保護,部門才有足夠時間去改善運作、提高服務質素和效率,以及訂立一個具競爭性的價格,以免在各政府部門"解除約束"後,機電工程署要面對生意銳減的情況。我們認為機電工程署的未來財政狀況未必如業務概要這麼樂觀,所以我們提出幾點要求。

第一,我們要求政府將目標回報率調低,並且在營運基金成立初期首三年,無須向政府支付股息,務使機電工程署有更大和更多保留的盈利,可以用作資本投資,提高競爭能力。日後待機電工程署具競爭能力後,才檢討是

否需要繳交股息。

第二,政府應考慮首三年的償還貸款和還息是否可以延遲。民主黨認為如果透過調低回報率、不須派股息、首三年不需還息、還本時,機電工程署在首三年就可在較為寬鬆的財政環境下,保留更多盈利,使它在面對更大競爭的情況下,有更好的條件,與市場競爭。

我想回應一下同事提到的有關"外判"制度的問題。其實現時政府不少 工程已經是以"外判"形式進行,例如市政總署、區域市政總署和一些其他 機構都有這情況出現。這種"外判"制度,有些是確可令政府節省金錢的。

最後,我想提出一點,我們在過去幾天與工會接觸時,也明白及同情工會對這個營運基金的憂慮,但我覺得這個憂慮不可阻礙營運基金的成立。我認為政府要面對員工的憂慮,在成立了營運基金後,也要爭取工會與員工的合作。因此,我建議政府在成立了營運基金後,繼續定期與工會直接接觸,了解它們的意見,定期作出檢討。

主席先生,本人謹此陳辭,支持議案。

**何承天議員致辭**:主席先生,我沒有參與研究營運基金的小組委員會,所以 我本來不打算發言,但我聽了很多同事今天的發言後,想作出幾點回應。

我一直覺得,如果政府給予市民或其他部門一些服務,我們應該要知道 其服務是最好以及成本效益是最高的。但如果在政府部門內工作的,我們便 不能知道究竟是否能達到標準。譬如我們看到中國的國企現在也覺得有很大 問題。中國也希望能解決自己國家企業的問題,希望能私有化等。

今天很多議員都提到員工憂慮的問題,自由黨當然對這問題十分關注, 但工務司已向12個工會保證,不用擔心員工的問題。

在這個基本情況下,我覺得我們應該支持成立營運基金。我覺得如果我們這個服務部門不用與市場競爭,我們永遠都不可以達到最高的效率。我們沒有一個尺度去量度其是否可以達到這個效率。

一些議員說擔心外判工作後的質素會有問題,但其實這是不應該有問題 的,因為現時我們的電梯、冷氣等的維修都是外面的公司負責,大家的汽車

維修也是外面的公司負責,難道一定要到政府部門修車才行?況且,政府部門將來可以決定光顧哪間公司。如果政府部門光顧跑馬地某間修車行後發現效果不理想,或如一些議員說的他們用"水貨",便可以不再光顧,政府部門不會那麼愚蠢吧?

因此,我覺得這是過分憂慮,我認為議員應有責任令政府做的事能向市 民交代,而最好的方法是能夠知道其服務水準是否達到最高成本效益等,以 及有一個機制能夠監察它,使它可以與市場競爭。

主席先生,我支持成立這營運基金。

羅祥國議員致辭:主席先生,政府引進營運基金是進步的財政政策,民協是支持這大方向的。但是政府今次推出成立機電工程營運基金,民協則認為時機尚未成熟,準備不足。政府現行五個在實施中的營運基金已出現很多問題,而政府還未作出全面檢討。民協認為,直至政府願意對現有的營運基金作出全面檢討,並在提供改善方案以前,政府不適宜在現時再推出新的營運基金。

剛才很多議員也提到,機電工程署的業務已經有35%是以一個營運帳目的形式運作。我們也認為政府其實有需要令餘下的65%業務,也以一個模擬的形式處理,並用一段時間去觀察效果。機電工程營運基金與現行數個基金最不同之處,在於他們的業務將會真的面對市場的競爭。我們認為政府需要更多時間來評估這個實際競爭的效果,才決定一個推行的時間表。

民協反對政府在現時推出成立機電工程營運基金,但如果不幸這項建議 在今天獲得通過,我們還很希望政府能夠多些照顧員工方面的憂慮,並將這 營運基金的實際推行情況經常向立法局匯報。

謝謝主席先生。

李啟明議員致辭:主席先生,本人反對這項決議案,原因有三點:

第一,這機電工程營運基金生不逢時,要在這適值排污費營運基金遇到 嚴重困難、問題眾多時推出。同時,機電工程署35%的業務實行了營運帳 目,而這個帳目是未曾與私人機構有競爭的,是它自己定出來的,然而,即 使這35%的業務也不可以立刻拿出來與市場競爭。在這樣不成熟的條件下, 倉卒推出營運基金,我認為是不可以接受的。

第二,大家也關注到政府公務員的質素好對市民是很有貢獻的。我們看到機電工程署在自然流失的情況下,過去一年並無增加人手,但它的生產效率卻增加了5%,可見它正在不斷改善、改革運作,而員工在接觸我們時也表示支持機電工程署進行改革和改善。因此,在人手不增加反而下降的情況下,生產率仍可上升5%,故此,是否一定要實行營運基金才可改善部門的運作呢?這是值得大家考慮的。

第三,我很歡迎工務司對工會作出承諾,使他們有"免炒金牌",但他接着說會要求員工接受調動和培訓。我認為培訓是應該的,因為他們本身是技術人員,應不斷改進技術,為市民服務;但調動方面,以他們技術人員的身分,試問政府有甚麼其他部門可以容納他們呢?進行調動即是說他們"自動消失",因此,我認為員工的憂慮是未完全得以解除的。

本人基於上述三點理由,反對這項議案。

謝謝主席先生。

工務司致辭:剛才聽到很多議員發表不同意見,首先我要多謝各位議員對這計劃提出寶貴的意見。我深信,並很同意如要這個計劃成功,很需要員工對這計劃的信心和支持。因此,昨天我與眾多員工商談這計劃時,也重申這個問題。

當然,有關是否有信心、對這計劃是否支持以及對這計劃前景的看法,各位議員剛才提到將來需要競爭的問題。雖然現在機電工程署所提供的服務不是一種專利,但有很多專業技術的服務,並不是很容易在街上隨意找一個人便可以提供。正如我昨天對所有員工解釋,我深信只要保持現時的服務水準不會下降,加上未來幾年會有很多新醫院、學校和各種政府建築物,甚至政府車輛的增加,這個營運基金的生意額只會越來越大,不會越來越小。當然,競爭在所不免,但成立營運基金的目的,就是希望藉着這個機制,可以較有彈性地提供服務,亦可以較有彈性地維持競爭能力。營運基金當然不是改善我們對公眾的服務的唯一途徑,但我們相信這個機制可以更快速和更有效率地提高我們服務效率的水平。

大家曾經提及"三年掛鈎"是否表示對這個計劃的信心不足,我認為

主要是就無論任何一樣事情而言,在剛開始時,不免需要一個過渡時期,適當地加以調整。"三年掛鈎"是給我們一個機會,無論我們剛開始時有甚麼困難,或需要作出甚麼改善,我們都會有充分時間適當地加以調整,所以主要的目的是希望將來能為這個營運基金鋪設一條較好的路,然後再繼續運作。我們沒有理由說現時所有營運基金都是失敗的,我相信無論任何一樣生意或任何一件事情,都要不停作出檢討和改善。我相信最主要是現有的營運基金機制是否需要有所改善,使各個營運基金能得以更有效率地運作。

我知道各位議員對我們現時所訂的條件,例如回報率、或溢利和還款有所擔心。我相信隨着營運基金運作後,我們會對所有這些問題作出較彈性的處理和商討。我們每年會交出一個營運基金的計劃,提出如何繼續經營運作這個營運基金。我相信只要有一個共同的目的和信心,我本人很有信心這個營運基金的前途一定會更好。

謝謝主席先生。

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

Mr CHAN Wing-chan claimed a division.

**PRESIDENT**: Council shall proceed to a divison.

**PRESIDENT**: Mr CHAN Wing-chan, you should stand up after I have said either I think the "ayes" have it "or" the "noes" have it, not before I have said those words.

**PRESIDENT**: I would like to remind Members that they are now called upon to vote on the motion moved by the Secretary for Works under sections 3, 4 and 6 of the Trading Funds Ordinance in relation to the Electrical and Mechanical

Services Trading Fund.

Would Members please register their presence by pressing the top button and proceed to vote by choosing one of the three buttons below?

**PRESIDENT**: Before I declare the result, Members may wish to check their votes. I think we are still three short of the head count. Are there any queries?

張漢忠議員:主席先生,我已按了掣,但似乎無反應。

**PRESIDENT**: Please try again, Mr CHEUNG Hon-chung. (Laughter)

**PRESIDENT**: The result will now be displayed.

Mr Allen LEE, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr James TIEN, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the motion.

Mr NGAI Shiu-kit, Mr CHIM Pui-chung, Dr Philip WONG, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE PRESIDENT announced that there were 29 votes in favour of the motion and 24 votes against it. He therefore declared that the motion was carried.

BILLS

First Reading of Bills

LEGAL SERVICES LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 1996

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS)
BILL 1996

SOCIAL WORKERS REGISTRATION BILL

**CHILD CARE CENTRES (AMENDMENT) BILL 1996** 

SUPPLEMENTARY APPROPRIATION (1995-96) BILL 1996

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

**Second Reading of Bills** 

LEGAL SERVICES LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 1996

THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to amend the Legal Practitioners Ordinance and the Conveyancing and Property Ordinance."

He said: Mr President, I move that the Legal Services Legislation (Miscellaneous Amendments) Bill 1996 be read a Second time.

The main purpose of this Bill is to implement most of the proposals in the *Report on Legal Services* that involve legislative amendments. Before describing the proposed amendments, I would like to sketch in for Members the

background to this Bill.

## The background

In January 1993, the Law Society published a paper on "The Future of the Legal Profession". The paper was very critical of the existing system, (Let me quote):

"We believe that the rules which regulate the two branches of the profession and the relationships between them, and between them and their clients in general, increase cost, inhibit access to advice and representation and, frequently, protract proceedings. These outcomes arise, on average, without commensurate benefits in the quality of the product delivered. The current system has many in-built inefficiencies which would be avoided by alternative approaches."

The main proposal in the Law Society's paper was that there should be a unified legal profession.

A year after the Law Society's paper was published, the Bar Association published its Position Paper, which rejected the Law Society's proposals. We therefore had conflicting views from the two branches of the legal profession in respect of the unification of the legal profession. At the same time there were and remain other important issues relating to legal services that needed to be addressed — issues such as cost, access and the responsiveness of the legal profession to client needs.

The Administration decided that it should take the lead in bringing together all these issues and in reflecting the views of the community on them.

I need hardly restate the importance of the rule of law, the continuity of our legal system, and the vital role played by the legal profession. We need a strong and independent legal profession in Hong Kong. But the legal profession exists to serve the community. If legal services do not meet the needs of the consumer, or if they are too expensive, or inefficient, the community may lose faith not only in the legal profession but in our legal system itself. That is not a development that any of us wishes to see.

As Hong Kong prepares to enter the 21st century, we must be sure that the legal services available are the best that can be provided in this dynamic, international city. We must not be complacent about the present quality and standard of professional services. There are many aspects of professional practice that are obsolete or obsolescent and have been abandoned elsewhere; many restrictions on the ways in which legal services may be offered; and many practices that are anti-competitive and are not in the public interests.

### The Consultation Paper on Legal Services

In order to seek the views of the community on a wide range of issues relating to legal services, in March 1995 the Administration published the *Consultation Paper on Legal Services*. That paper contained 40 provisional recommendations.

Response to the Consultation Paper was good. 87 submissions were received, of which:

- 37 came from institutions, including the Bar Association and the Law Society
- 29 came from lawyers
- 21 came from individual members of the public.

Additional feedback in respect of some of the provisional recommendations was obtained through a Public Opinion Survey of 1 000 households, conducted by the Department of Applied Statistics and Operational Research of the City University of Hong Kong; and from the views reported in the media.

Of the 40 provisional recommendations there was clear public support for 34; there was clear public opposition to one; and public views were evenly divided in respect of five. Details of the feedback received from the consultation exercise, and the Administration's proposals for the way forward,

were set out in the *Report on Legal Services*, published in February this year.

# The Report on Legal Services

Many of the proposals set out in the Report can be implemented by the legal profession without legislation. For example, there are proposals in respect of improvements to client care and complaints-handling procedures, and in respect of the elimination of touting and commission-taking. The Administration is following-up these proposals with the two professional bodies. With regard to touting and commission-taking in respect of criminal defence work, the Law Society has had an opportunity, over the past year, to tackle this problem by using its audit trail procedures and inspector's powers. The Independent Commission Against Corruption is now making an assessment of the extent of the problem. By the end of the year, the Administration should be in a position to decide whether there is a need to criminalize this type of behaviour.

So far as legislative proposals are concerned, the *Report on Legal Services* proposed that a Bill should be introduced into this Council in the current Session to implement six of the proposals. The Bill that I am introducing today contains provisions in respect of five of those proposals, together with certain other amendments that I will describe in a moment. The one legislative amendment that was proposed in the Report but is not included in the Bill relates to the criteria for admission as a barrister.

The Report proposed that the criteria should be amended so that they are objective, reasonable, non-discriminatory and standards-based. This is necessary for Hong Kong to fulfil its obligations as a member of the World Trade Organization. The Administration has for some time been pressing the Bar Association for its suggestions for new criteria, but these were received only after the Bill was Gazetted. The Administration is now studying the Bar Association's suggestions, with a view to introducing appropriate Committee stage amendments to the Bill.

The Bill

Mr Deputy, I would now like to outline the main provisions in the Bill.

Clause 2 adds a new Part IIAA to the Legal Practitioners Ordinance relating to solicitor corporations. This new Part will implement the proposal in the *Report on Legal Services* that, subject to rules, solicitors should be permitted to incorporate their practices with either limited or unlimited liability. Given this proposed development, it is logical to permit foreign lawyers also to incorporate their practices, and clause 5 so provides. These two proposals follow recent changes to the law that permit accountants similarly to incorporate their practices.

Clause 7 of the Bill deals with interest on solicitors' clients' accounts. This provision implements the proposal in the *Report on Legal Services* that solicitors should be required to pay interest to clients, where it is reasonable to do so, in respect of clients' money held by the solicitor. The circumstances in which there will be such a requirement will be set out in rules to be made by the Council of the Law Society.

Clause 8 of the Bill relates to the proposed new status of Senior Counsel, which will, with effect from 1 July 1997, replace the title of Queen's Counsel. This provision will implement the proposal in the *Report on Legal Services* that the status of Queen's Counsel should (under a different name) be retained. I would add that the new section will not affect the existing system of appointing Queen's Counsel, which will continue until 30 June 1997. It will therefore be possible for one last batch of Queen's Counsel to be appointed before that date.

Clauses 9 to 13 of the Bill contain minor amendments to the Legal Practitioners Ordinance in the respect of the Barristers Disciplinary Tribunal. These amendments have been included to deal with practical problems that have

emerged since the relevant provisions were enacted in 1992.

Clauses 14 and 15 add new sections to the Ordinance, providing for notaries public and solicitors to enter into multi-disciplinary practices. The *Report on Legal Services* proposed that solicitors should be permitted to enter into such practices, and it is consistent with this approach to permit notaries public to do likewise. Multi-disciplinary practices offer several advantages: they offer clients the convenience of "one-stop shopping" for a broad range of services; they may reduce costs for the consumer and provide a quicker and more effective service; and they may enable lawyers to operate more efficiently, and to be in a better position to compete with other suppliers of professional services.

Clause 16 adds a new section 56A to the Ordinance, which invalidates any non-statutory scale of charges prescribed by the Law Society that must be charged by solicitors for undertaking non-contentious business. This follows from the Administration's belief that mandatory scale fees are wrong in principle, as being unfair to consumers and anti-competitive.

Clause 17 of the Bill amends section 74 of the Legal Practitioners Ordinance to broaden the composition of the Costs Committee, and to prohibit it from setting scale fees for conveyancing work. The Costs Committee is currently empowered to make rules, with the prior approval of the Chief Justice, to provide for the remuneration of solicitors in respect of non-contentious At present, the Committee consists of a High Court judge (who is chairman); the Registrar or a deputy registrar of the Supreme Court; the Director of Lands or the Director of Intellectual Property (or either their representatives); and the President and one Vice-President of the Law Society, and one member of The Bill will amend the constitution of the Committee so that, the Law Society. in addition to the current membership, it will include four to six other persons. At least one of these must be someone who represents the interests of consumers of legal services, and the others must have substantial experience in banking, accounting or some other commercial activity. The effect will be that some members will represent the solicitors profession or consumer interests, and others (including the representatives of the Judiciary) will act as independent arbiters.

Clause 18 of the Bill adds a new section 34A to the Conveyancing and Property Ordinance, which invalidates any contractual provisions that require a

purchaser to pay the vendor's legal costs, if the sale is of a unit in an uncompleted development, or if the sale is by the developer of a completed development. This implements another of the proposals in the *Report on Legal Services*.

## Abolition of scale fees

I turn now, Mr Deputy, to the abolition of scale fees. Clause 20 and Schedule 2 of the Bill repeal the scale fees prescribed for conveyancing work. The main arguments for and against the abolition of scale fees for conveyancing were set out in the *Consultation Paper on Legal Services*. The feedback received during the consultation exercise indicated that there was public support for abolition. Apart from the submissions from the Law Society and some individual solicitors, there were only four written submissions that opposed abolition. Nearly half of the respondents to the Public Opinion Survey who had previously consulted lawyers were dissatisfied with the scale fees system.

The *Report on Legal Services* set out the Law Society's reasons for opposing the abolition of scale fees, and also set out the counter-arguments. The Report proposed that legislation should be prepared to abolish scale fees in respect of conveyancing work but if, before the legislation was introduced into this Council, the Law Society were to make alternative proposals in respect of fees for conveyancing that were fair to consumers, the Administration would give them careful consideration before deciding on the way forward.

On 17 May 1996, the Law Society submitted its proposals to the Administration in the form of a Position Paper. The Law Society recognized that, since the last revision of scale fees in 1983, "an escalating property market may have caused the scale structure to become somewhat out of balance." It suggested that the appropriate way in which to address the problem would be for the Costs Committee to be reconvened to determine the acceptable level and structure of the fee system.

In view of the Law Society's response to the *Consultation Paper on Legal Services* and subsequent correspondence and discussions with us, the Administration had expected that the paper that the Law Society would eventually put forward would contain specific proposals in respect of the fees for various types of transactions, such as project conveyancing, and conveyances

where a solicitor acts in the purchase and mortgage of the property. It had also expected that those specific proposals would be supported by detailed empirical data, including the report prepared by consultants commissioned by the Law Society.

But, Mr Deputy, this was not the case. The Law Society merely recommended that the Costs Committee should determine the level of fees, without producing any specific proposals. Although the Law Society's Position Paper suggested that "it would be appropriate in general terms for an "across the board" reduction of 20% of the existing scale in respect of purchaser's costs," it did not give any reason for this.

The Law Society failed to put forward specific proposals, supported by empirical data. It cannot therefore be said that the Law Society's proposals are fair to consumers and are not anti-competitive. There is nothing for the Administration to evaluate except a proposal that the Costs Committee should decide the level and structure of the fee system. The Administration does not believe this proposal meets community aspirations and has therefore included in the Bill the provisions to abolish scale fees for conveyancing work, a move which has wide community support.

Since the *Report on Legal Services* was published, the Law Society and some individual solicitors have argued strongly against the abolition of scale fees. Let me respond to some of the arguments they have raised.

One point that is repeatedly asserted is that the abolition of conveyancing scale fees in England has been a "disaster", in that it led to a price war, which resulted in shoddy work, increased claims for negligence, and cause the bankruptcies of many solicitors. I would like to set the record straight.

Scale fees were abolished in England in 1973. Six years later a Royal Commission undertook a comprehensive study of conveyancing throughout the country. There is no reference in the report to any of the problems I have just mentioned.

In recent years, England has suffered its worst recession this century and this has inevitably affected solicitors in many areas of their work. The volume of domestic conveyancing halved between 1988 and 1992. Prices fell in real terms between 1986 and 1993 by 45%.

An equally profound change occurred in the financial services industry, where keen competition developed for the sale of a wide range of complex financial products. This development gave financial institutions a considerably enhanced influence over all aspects of the housing market.

It is clear that solicitors in England have been faced with serious difficulties in recent years, and many have become bankrupt. But there is no basis for linking those difficulties with the abolition of scale fees in 1973. Nor is there any basis for assuming that things would have been different had scale fees still been in place. On the contrary, in March 1994, a report of the English Law Society's special working party on conveyancing services included the following statement -

"We have concluded that compulsory and recommended fee scales would be unworkable and ineffective."

Those in favour of retaining scale fees have said that the abolition of scale fees will lead to a vicious price war, in which fees will drop below an unprofitable level and solicitors will produce shoddy work. There is no empirical evidence to support this assertion. I would just analyse what is being said. It is that solicitors, whose professional training and discipline are said to justify their monopoly over conveyancing work, cannot provide proper and professional conveyancing services unless their fees are artificially fixed by reference to the price of the property conveyed. That is, Mr Deputy, an astonishing argument for a profession to put forward and, I suggest, is untenable.

Some have pointed to the fact that Singapore has decided to retain a modified form of scale fees for conveyancing. They argue that Singapore's background is similar to that of Hong Kong. However, in Singapore only a relatively small segment of the population own or intend to acquire private housing. 87% of the population live in flats provided by the Housing

Development Board, which provides legal services for sales, purchases and mortgages of those flats. The two places are not therefore comparable in respect of their housing markets.

The Law Society has also referred to the abolition of scale fees as "the English experiment". This is misleading. Scale fees have been abolished not only in England, but also in New Zealand, Canada and most parts of Australia. Moreover, the Administration is not aware of any place that has abolished scale fees and has subsequently re-introduced them.

If scale fees are abolished, solicitors will be required to charge conveyancing fees that are fair and reasonable "having regard to all the circumstances of the case". Consumers will therefore be charged on the basis of the work done, not on the value of the property concerned. This will improve the efficiency and cost-effectiveness of conveyancing services. The quality of the services provided depends on the expertise and professionalism of the solicitor concerned. Scale fees do not guarantee quality, and the abolition of scale fees will be no excuse for poor quality. The solicitors are members of a profession and must observe professional standards. The Law Society has a duty to discipline any of its members who fail in this respect. Other professions, trades and industries can provide quality services without price fixing, and there is no reason why solicitors cannot do so as well.

It has recently been suggested that the abolition of scale fees would undermine the independence of the legal profession. This Bill does not do that. No one is seeking to interfere with the way in which legal practitioners do their work. But it is quite legitimate for the legislature to step in and remove a pricing arrangement that is anti-competitive and unfair to consumers. Moreover, the monopoly that solicitors have in respect of conveyancing is conferred by legislation. The legislature is entitled to amend that legislation to prevent price-fixing in respect of conveyancing.

# Public support

Mr Deputy, as I have explained earlier, this Bill is the product of several years of debate, a debate that involves all sections of the community. This is only right. Members of the community are the consumers of legal services and they have every right to express their views on legal services in Hong Kong.

The reforms contained in this Bill reflect those views and have wide public support.

Most of the proposed reforms are also supported by the two branches of the legal profession. This is not surprising, given that the Bill offers new opportunities for those who supply legal services. Solicitors and foreign lawyers will be permitted to operate from within new business structures — incorporated and multi-disciplinary practices. These structures will offer greater flexibility than the present regime, both in terms of raising capital and sharing profits, and in meeting clients' needs for a wide range of services. Similar developments are occurring elsewhere in the common law world. Legal practitioners in Hong Kong must have the ability to compete with other places in respect of the quality and variety of their services. I am pleased that the Law Society supports these reforms.

I assure Members that the Bill is put forward by the Administration in the belief that all its provisions are in the public interest. They will benefit members of the public, who are consumers of legal services, and will offer opportunities for legal practitioners to provide quality legal services in ways that are more cost-effective, competitive and flexible than at present.

Mr Deputy, I commend this Bill to the Council.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

# ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1996

THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to amend the Supreme Court Ordinance to enable certain solicitors to be appointed as recorders and to enable the appointment of temporary deputy registrars and temporary assistant registrars; to amend the Jury Ordinance to repeal the requirement of the Registrar of the Supreme Court to state to the court or the judge his reasons for excusing a person from attending on a jury;

to amend the Defences (Firing Areas) Ordinance to update the list of firing areas; to amend the Protected Places (Safety) Ordinance to replace the power of authorized guards to discharge firearms with the power to use reasonable force; and to provide for other miscellaneous and minor amendments to those Ordinances."

He said: Mr Deputy, I move that the Administration of Justice (Miscellaneous Provisions) Bill 1996 be read a Second time. The Bill aims to amend four ordinances relating to the administration of justice and to security which are obsolete or anomalous and to repeal five ordinances which are no longer needed or do not suit Hong Kong's present circumstances.

The Bill amends the Supreme Court Ordinance to enable solicitors to be appointed as recorders and to give the Chief Justice the power to appoint temporary deputy registrars and temporary assistant registrars.

The Bill also amends the Jury Ordinance to abolish the requirement that the Registrar of the Supreme Court must state to the court or the judge his reasons for excusing a person from attending on a jury.

The opportunity is also taken to amend provisions in two security-related ordinances and to repeal five others. They are obsolete, anomalous, or have long fallen into disuse.

The Bill proposes to repeal the Secretary of State for Defence (Succession to Property) Ordinance. That Ordinance provides for the control and succession of property vested in the Secretary of State for Defence. The building lot covered in the Ordinance was sold in 1969 and the provisions are no longer required.

The Air Armament Practice Ordinance, which permits practice in bombing in Sai Kung is wholly outdated. Such activities ceased in 1966. Since then Sai Kung has been built up and extensively developed for recreational use. Bombing exercises of the sort regulated by the Ordinance cannot practically be undertaken in modern Hong Kong. The Bill proposes to repeal this Ordinance.

It is also for the same reason that the Defence (Firing Areas) Ordinance

should be updated. The British garrison have not used the Basalt Island range since approximately 1985. All naval gunfire exercise now take place in international waters south of Hong Kong. No practice has taken place in the torpedo range for at least 30 years, while the three minesweeping ranges have not been used since at least 1984. They are now located across major shipping channels which would preclude their reactivation. The Bill proposes to update the references to firing areas in this Ordinance.

The Defence Works Protection Ordinance is substantially similar to section 1 of the Official Secrets Act 1911 which prohibits the sketching of prohibited places for any purposes prejudicial to the safety and interests of the State. The localizing legislation for the 1911 Act is being drafted and discussed in the Joint Liaison Group. The Ordinance is redundant, and the Bill proposes to repeal it.

The Compulsory Service Ordinance and the China Fleet Club Incorporation Ordinance are also obsolete. The former was suspended by the Governor in Council in 1961. At present, service to all our auxiliary forces is entirely on a voluntary basis and we do not envisage that such service will ever be made compulsory again. The China Fleet Club closed down in 1992 and its Trustees wound up by the court in 1993. The Ordinance is therefore no longer needed. The Bill proposes to repeal these two Ordinances.

The Bill also seeks to amend the Protected Places (Safety) Ordinance to provide that an authorized guard may use "reasonable force" in carrying out his duties under this Ordinance to bring the provisions in line with the internal orders of the police and the British forces.

Mr Deputy, the Bill is part of our continuing process of tidying up the statute book by removing anomalies, updating provisions and repealing obsolete ordinances. I commend the Bill to this Council for early passage into law.

Thank you, Mr Deputy.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

#### SOCIAL WORKERS REGISTRATION BILL

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to provide for the registration of social workers and disciplinary control of the professional activities of registered social workers, and for related matters."

THE PRESIDENT resumed the Chair.

**衞生福利司致辭**:主席先生,本人謹動議二讀《社會工作者註冊條例草案》。

近年來,本港的社會工作者大多認為,作為一群專業工作者,實在有需要制訂專業守則,以監察同工的專業操守。有鑑於此,政府遂制定《社會工作者註冊條例草案》。本條例草案有兩個主要目的:

- (一)建立一個為專業社會工作者註冊的機制;
- (二)為註冊社會工作者制訂專業守則,凡牴觸守則者,可能面臨紀律處分

#### 專業名銜的使用

眾所周知,"社會工作者"或"社工"這個名稱,在香港已廣泛使用。有不少能幹而又熱誠的人士,他們雖然未受過專業社工訓練,但多年來都一直積極參與社會工作服務。在參與此等工作時,他們也許會自稱或被稱為"社會工作者"或"社工",而他們的工作,也可能普遍地被形容為"社會工作"。在草擬本條例草案期間,我們一方面要確保專業社會工作或專業社會工作者的名銜不被濫用,另一方面,亦不想過分限制"社會工作"或"社會工作者"這兩個名稱在日常生活中的普遍使用,否則,很多參與志願工作,但又未受專業訓練的人士,便可能不經意地觸犯法例。

要在兩者之間取得平衡,本條例草案規定,任何人士如想使用 —

- (a) "註冊社會工作者"的名銜,或英文縮寫 "R.S.W.";或
- (b) "社會工作"、"社會工作者"或"社工",以描述其專業身分,

均須註冊。

不過,如果有一個人為其他人士,例如露宿者或癮君子提供協助,則 仍然可以自稱參與社會工作,而不會牴觸本條例草案的有關條文,但他不能 自稱為一位專業社會工作者。

#### 社會工作者註冊局

專業社會工作者註冊的職責,將由"社會工作者註冊局"承擔。該局 將負責訂定專業註冊的資格、管理有關的註冊機制、擬訂和審批工作守則, 以及處理註冊專業社工的紀律事宜。

註冊局由15名成員組成,其中八名由註冊社會工作者互選產生。其餘七名,除社會福利署署長或其代表外,六名由總督委任。其中不少於三名為非註冊社工,兩名則為已註冊的公職人員。

該局可通過向註冊社會工作者徵收費用,以支付其經費。註冊局可自 行委任註冊主任,以及聘用有關人士,協助履行該局的職能及責任。

#### 紀律處分程序

註冊局的另一職能是要處理對註冊社會工作者的投訴。該局可委任紀律委員會就投訴進行研究,以及就應採取的行動提出建議。為維護社工專業的誠信,一名註冊社工觸犯條例草案附表2的任何一項罪行時,註冊局必須將他從登記冊上永久除名。同樣地,任何人士若被裁定觸犯這些刑事罪行,則不會獲准註冊。任何人士不服註冊局的決定,可以向上訴法院提出上訴。

#### 徵詢意見

主席先生,當局在草擬條例草案時,曾廣泛徵詢業內人士的意見,包括社會福利署職員、非政府機構、本局的福利事務委員會,以及社會福利諮詢委員會等。另外,我藉此機會謝謝社會專業人員註冊局的代表,在草擬法案過程中向我們提供很多很有建設性的意見。

主席先生,我謹此建議本局議員通過本條例草案。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

#### CHILD CARE CENTRES (AMENDMENT) BILL 1996

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to amend the Child Care Centres Ordinance."

**衞生福利司致辭**:主席先生,我謹動議二讀《1996年幼兒中心(修訂)條例草案》。條例草案提出多項修訂《幼兒中心條例》的建議,包括:

- (a) 制定條文,防止不合適人士擔任幼兒託管人;
- (b) 制定條文,豁免互助幼兒中心受該條例各項條文規管;及
- (c) 對該條例作出技術修訂。

我們都聽過幼童和嬰兒遭託管人嚴重疏忽照顧或虐待的事件。因此,當 局需要對幼兒託管人採取適當的管制措施。在制訂新的管制措施時,我們力 求在各方面取得平衡。

我們需要防止不合適人士擔任幼兒託管人,但又要避免採用複雜或擾民的管制措施,以免令有意提供託兒服務的人士卻步。因此,我們建議授權家長,由他們自行查核所聘用的幼兒託管人,是否為合適人選。我們建議,倘某人曾因觸犯任何指明的嚴重罪行而被定罪,而該等罪行或導致受照顧的兒童被虐待,或根據死因裁判官研訊結果的紀錄,某人所做的事情或疏忽行為,危害受照顧兒童,則應禁止擔任幼兒託管人。幼兒託管人可要求社會福利署署長發出證明書,證明當局並無禁止他擔任幼兒託管人。這樣,家長便可要求擬照顧其子女的人出示證明書,以協助他們評估該人是否適合照顧他們的子女。

我們認為,家長最終有責任查核所聘用的人,是否適合擔任幼兒託管

人,而上述做法正強調這項責任。如果這些修訂獲得通過,我們便會展開宣傳工作,明確地宣揚這個信息,並鼓勵家長充分利用這些新條文,而新條文的目的是協助家長查核其子女是否獲得合適的幼兒託管人照顧。

除了加強管制個別幼兒託管人之外,我們也建議作出一些修訂,以方便互助幼兒小組的運作。這些小組有助解決兒童單獨留在家中的問題。它們可由社會福利機構、宗教團體、婦女中心、互助委員會及其他非政府機構設立。義務工作者及家長在有關機構佔用的地方輪流當值,照顧兒童。由於這些小組符合慣常或一般照顧幼兒安排的準則,因此,有關地方須受該條例全面規管。

為鼓勵有關機構成立互助幼兒小組,條例草案將豁免這些小組營辦的幼兒中心,受該條例各項條文規管。不過,它們須符合若干關於監管、樓宇結構及防火措施的簡化規定。

最後,條例草案也建議對該條例作出若干項技術修訂,例如修訂對所犯 罪行判處的罰款額,以配合通脹增幅,以及現時向總督提出的上訴,將來須 向行政上訴委員會提出。

謝謝主席先生。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

# SUPPLEMENTARY APPROPRIATION (1995-96) BILL 1996

THE SECRETARY FOR THE TREASURY to move the Second Reading of: "A Bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1996."

庫務司致辭:主席先生,我謹動議二讀《1996年追加撥款(1995-96年度)條例草案》。

《公共財政條例》第9條規定: "在結算任何財政年度的帳目時,記在任

何總目上的開支如超逾撥款條例撥予該總目的款額,超額之數須包括在追加 撥款條例草案內,而該條例草案須在出現該超額開支的財政年度終結後,於 切實可行範圍內盡快提交立法局。"

庫務署署長現已完成一九九五至九六財政年度的帳目結算。在總共92個開支總目中,69個總目的開支超出《1995年撥款條例》原先撥給該等總目的款項。各總目所出現的超額開支,包括我稍後將詳加闡釋的總目50 一政府車輛管理處的超額開支,均經由財務委員會批准或該委員會授權批准,給予追加撥款。該等追加撥款已由來自同一總目或其他總目節省的款額,或總目106 一 雜項服務下的"額外承擔"撥款所抵銷。《1996年追加撥款(1995-96年度)條例草案》旨在對財務委員會批准或該委員會授權批准撥給各開支總目的追加撥款數額,給予最終的法律權力依據。

該69個開支總目所需的追加撥款數額總共為74.826億元。與往年一樣,引致超額開支的主要因素是公務員及政府補助機構每年的薪酬調整(46.271億元)。其他較重要的因素,包括支付綜合社會保障援助和公共福利金計劃增加的開支(10.736億元)及退休金的額外開支(5.895億元)。在編製一九九五至九六財政年度的原來預算時,我們已在"額外承擔"分目下預留撥款,支付一九九五年的薪酬調整、綜合社會保障援助和公共福利金計劃下各項援助金按通脹的調整,及退休金按法定所需的通脹調整而引致的額外付款。

至於我先前提及在總目50 — 政府車輛管理處項下出現的371,730.58元超額開支,政府車輛管理處處長向我表示,因為政府必須遵守有關標書訂明的付款條件,有關的超額開支是緊急和無可避免的。不過,在處理付款的程序中,一時不察,並無就超逾開支總目撥款上限的款額,取得所需的預先批准。政府車輛管理處處長已向我保證,將會在庫務署署長的協助下,檢討其部門的工作程序,確保更嚴謹地管制及監察開支,避免再度出現同類情況。此外,我將會通知所有管制人員,留意本身在《公共財政條例》下應履行的責任。

鑑於多個開支總目中均有省下款項,而原先在預算中亦有就額外承擔預留撥款,故即使計及本條例草案所要求的追加撥款,一九九五至九六財政年度的開支總額仍未超逾《1995年撥款條例》原先撥出的款額。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

## **Resumption of Second Reading Debate on Bills**

#### **COSTS IN CRIMINAL CASES BILL**

# Resumption of debate on Second Reading which was moved on 2 November 1995

何俊仁議員致辭:主席先生,本人謹代表研究這條例草案的委員會發言。

本條例草案大致上以英國的《1995年罪行檢控法令》(以下簡稱為"英國的法令")為藍本,旨在除去現行規管在刑事案件中判給訟費的法例和做法中互相矛盾及不一致的地方,並訂出一套適用於各級刑事法院的明確準則,藉以改革該等法例和做法。

在我們研究條例草案期間,討論得最多的是虛耗訟費條文的優劣。條例草案第18條授權法院命令法律代表或其他代表,負擔刑事法律程序的某一方所招致的虛耗訟費。草案第2條將虛耗訟費的含義,界定為法律程序中一方因其法律代表或其他代表的不正當、不合理或疏忽的作為或不作為所招致的訟費,或法律程序中一方所招致的訟費,而有鑑於該等作為或不作為在該等訟費招致後發生,期望由該方支付該等訟費是不合理的。

條例草案委員會察悉,對於香港大律師公會("大律師公會")及香港律師會("律師會")反對的虛耗訟費規定,刑事訴訟案件訟費工作小組並未提出任何建議。條例草案委員會因此質疑,當局基於甚麼理據提出該等規定。

當局解釋,有關條文旨在保障被告人的利益。當局認為在原則上,即使條例草案第2條所提述引致虛耗訟費的情況甚少發生,亦應賦權法庭作出虛耗訟費命令,這是正確和公平的做法。目前,法律中並無任何條文規管刑事法律程序中的訟費事宜。因此,在大多數案件中的虛耗訟費,雖然被告人本身並無過錯,亦須由他承擔。如法律代表有不正當的行為,則無論情況如何罕見,亦須尋求補救辦法。

大律師公會特別關注到,擬議的虛耗訟費條文會令大律師有所顧慮,因 而不盡全力為委託人謀求利益,或履行其專業職責。條例草案委員會及律師 會亦同樣關注此問題。現時,高級的紀錄法庭具固有的司法管轄權,命令律 師本人承擔訟費,但不能對大律師行使此項權力。如條例草案所訂的虛耗訟 費條文獲得通過,則大律師在刑事法律程序中享有的豁免權將被撤銷。

當局提出的論點,是正如英國方面所載述的案件顯示,法律專業人士如能適當地執行職務,即無須顧慮這方面的問題。此外,對於屬法院人員的訟務律師,即使法院可行使固有的司法管轄權命令其繳付虛耗訟費,現時亦無跡象顯示他們由於顧慮在虛耗訟費方面須負上個人法律責任,而不盡全力為委託人謀求利益,或執行其專業職務。

對於議員憂慮如法庭有意命令法律代表或其他代表繳付訟費,這些代表的利益未能獲得足夠保障這一點,當局強調條例草案已提供足夠保障。草案第18(2)條規定,除非有關法律代表或其他代表已獲給予合理的機會,在法院席前提出不應作出虛耗訟費命令的因由,否則不得作出該項命令。此外,本條例草案亦提供途徑,使反對法庭所作虛耗訟費命令的人士可以提出上訴。

至於草案18(3)條,條例草案委員會及大律師公會質疑其是否公平,因 為代表政府或獲法律援助被告人的私人執業律師,須就虛耗訟費命令負上個 人法律責任,而受僱於政府的律師則無須負此責任。

當局解釋其政策時稱,如公務員在執行職務期間,引致無辜的當事人蒙受任何損失或損害,則政府會負責賠償。此項政策涵蓋政府律師在執行職務期間引致的虛耗訟費。如政府律師有不具充分理由的行為,當局可對其進行紀律處分程序。如法院命令由律政署或法律援助署委託的私人執業訟務律師(不論是大律師或律師)個人繳付虛耗訟費,則該等命令須由有關的訟務律師而非政府負責,因為該名律師是提供服務者,而非根據僱用合約行事。英國方面亦訂有相類的條文。

主席先生,我們已詳細及審慎研究制定虛耗訟費條文的優劣。然而,條 例草案委員會大部分委員對該等條文極有保留。我們的考慮因素如下:

第一,雖然當局表示司法機構支持本條例草案,但並無明確證據顯示必 須制訂此項規定;或有真正問題存在,須予解決;或制定該等條文後有關 "問題"會迎刃而解。議員不能接受當局引用傳媒有關司法人員批評法律代 表有不具充分理由的行為的報道,以顯示問題的嚴重性,藉此作為有需要立 法的論據;

第二,該等條文或會令法律代表在進行抗辯時受到掣肘,對被告人極為 不利。為公眾利益計,訟務律師應可在全無限制或壓力的情況下處理案件; 第三,私人執業律師與政府律師所獲待遇不同,因而出現不公平的情況;

第四,案件延期審訊通常是由法庭安排而提出,而非應辯方或控方的要求;

第五,當局察覺的問題,即被告人須繳付由其法律代表招致的虛耗訟費,可藉其他方法,例如用紀律處分程序來處理;

第六,如因法律程序中某一方或其法律代表的不必要或不恰當的作為或不作為而招致訟費,則法庭可根據草案第17條賦予的權力作出命令,將訟費判給另一方。此條文亦足以涵蓋任何因刑事法律程序中,某一方不具充分理由的行為而令另一方所招致的虛耗訟費。此外,根據現行法例,除訟務大律師可獲豁免被訴外,委託人有權就其法律代表的任何不正當行為,提出法律訴訟;及

第七,訟費條文可能被濫用。只要法例中訂有虛耗訟費條文,敗訴一方即可藉此要求其法律代表賠償可能蒙受的損失。

因此,條例草案委員會提議當局刪除有關虛耗訟費的條文。當局其後建議將在英國上訴法院"Ridehalgh 訴 Horsefield"一案所闡明規管虛耗訟費的原則,納入條例草案內。此舉會將有關規定的適用範圍,限制於極為明顯的情況,即缺席、遲到或疏忽而引致本可避免的延期聆訊的情況下,方可進行有關虛耗訟費的研訊。經再進行商議,當局最終同意自Ridehalgh原則中刪除"疏忽"的因素。

條例草案委員會進行詳細研究後,認為當局這項建議可以接受。我們並提議修正條例草案第2條所載的虛耗訟費定義,藉以把虛耗訟費的含義界定為沒有合理因由而缺席或遲到,導致本可避免的延期所招致的訟費。當局贊同此提議。本人代表條例草案委員會歡迎律政司稍後在委員會審議階段動議所需的修正案。

當局並同意按條例草案委員會的建議,對條例草案作出若干修正。當局同意把在裁判法院法律程序中可判給被告人或檢控人的訟費上限提高至3萬元,並規定日後首席大法官可在獲得立法局批准下,藉命令修訂該款額;以英國的法令所訂"較輕的懲罰",取代條例草案第8條所訂"有很大的差異"的標準;以及引進過渡性條文,以規定條例草案不適用於就條例草案實

施前所犯的罪行進行的刑事法律程序。

主席先生,本人謹此陳辭,請本局同事支持按律政司所動議的修正案修 正的條例草案。

MISS MARGARET NG: Mr President, I would like to take this opportunity to put on record the legal profession's position concerning the provisions on "wasted costs" in the Bill.

Wasted costs orders were introduced in England in recent years allowing the court to make a legal representative of a party to pay costs personally incurred in the course of a court hearing as a result of his negligence or improper conduct. The aim was to discourage wasting the court's time, and to ensure that such costs do not have to be borne by the party. With these aims, the legal profession entirely agrees.

Further, the profession does not object to the principle of wasted costs, although we do not consider it the best way to achieve the aims.

However, the profession did object very strongly to the provisions as originally drafted in the Bill, because the mischief the wide ambit of the terms may cause far out-weighs the possible benefit. Wasted costs orders may be misused with unfairness to the legal representative, but more importantly, it can be oppressive and inhibit the defence. In the context of criminal trials, this is a serious matter.

This was the basis on which the legal profession made its submissions to the Bills Committee, and this, as far as I understand it, was the basis on which the Bills Committee rejected the original proposals.

Following the decision reached by the Bills Committee, the Administration volunteered amendments to restrict the ambit of the definition of "wasted costs", as the Honourable Albert HO, Chairman of the Bills Committee state in his report. With "wasted costs" being limited to costs incurred as a result of failure to appear or lateness without reasonable cause leading to an otherwise avoidable adjournment, the profession does not think it right to continue with its objection, and therefore accepts the Administration's proposed amendments at the

Committee stage.

However, Mr President, the fact remains that wasted costs is a dubious instrument. Now that it has been introduced, we would be constantly wary of any attempt to widen its use at some future date.

Thank you, Mr President.

**ATTORNEY GENERAL:** Mr President, I am most grateful to the Chairman of the Bills Committee, the Honourable Albert HO, and members of the Bills Committee for their careful study of this important Bill. I would also like to thank the Bar Association and the Law Society for their helpful and thoughtful comments —comments which we have taken very seriously indeed.

Mr President, the purpose of this Bill is to reform the existing law and practice governing the award of costs in criminal cases. The Bill removes anomalies and inconsistencies by providing a fair and coherent set of principles applicable to both the defence and prosecution at all levels of our criminal courts. It gives the courts the power to ensure that persons who suffer losses and expenses as a result of unjustifiable conduct on the part of their representatives or lawyers in criminal proceedings will be compensated.

As the Honourable Albert HO has pointed out, considerable controversy arose over the wasted costs provisions. Let me briefly re-state the underlying philosophy for those provisions. The idea is to arm the courts with an effective remedy for the protection of the injured, so that any costs incurred by a party to criminal proceedings as a result of unjustifiable conduct on the part of his/her legal or other representative will be borne by that lawyer or representative. And it has been pointed out these wasted costs provisions would apply equally to the prosecution. I should stress, Mr President, that the provisions are not aimed at penalizing lawyers, but to compensate the injured party for the loss where it would be unreasonable to expect him to pay.

Both the Honourable Albert HO and the Honourable Miss Margaret NG

have set out in some considerable detail the principal objections put forward by the Bar Association and the strong reservations felt by the Bills Committee over the introduction of wasted costs provisions as originally set out in clause 2 and clause 18 of the Bill. As originally drafted, the Bill proposes to define wasted costs to mean any cost incurred by a party to criminal proceedings as a result of improper unreasonable negligent act or omission on the part of his legal or other representative, or where, in the light of any such act or omission occurring after such costs had been incurred, it is unreasonable to expect that party to pay.

Mr President, after careful consideration of the strong objections of the Bar Association already referred to in the reservations of the Bills Committee, and bearing in mind the likely circumstances when the court may wish to make a wasted costs order, the Administration proposed and the Bills Committee agreed that the scope of the definition of wasted costs in clause 2 be limited to circumstances where costs are incurred as a result of any failure to appear or lateness without reasonable cause on the part of any legal or other representative. And I should be pleased to move appropriate amendments to the Bill at the Committee stage.

The scrutiny of the Bill by the Bills Committee had led to some other proposed amendments, which I will also move at the Committee stage. As we have heard, they include an amendment to increase the ceiling on defence and prosecution costs in summary proceedings from \$15,000 to \$30,000, to reflect current general costs levels. The Bill will also be amended to allow future adjustment to both defence and prosecution costs in summary proceedings to be made by way of subsidiary legislation.

Another amendment proposed by the Bills Committee relates to the award of costs in favour of a defendant in the event of successful appeal against sentence. Clause 8(b) and 9(2)(b) originally provided that if the court substitutes on appeal a sentence "substantially at variance with" that passed by the court below, costs may be awarded to the defendant. The expression of "substantially at variance with" is to be replaced by "less severe punishment than", which is in line with the English legislation.

The Bill will also be amended to include a transitional provision so that it

will not apply to criminal proceedings in respect of offences committed before the coming into operation of the enacted Bill. I will move to include a new clause 25 at the Committee stage to so provide.

Finally, Mr President, I shall move a number of amendments to the Chinese text of the Bill to reflect drafting improvements.

Thank you, Mr President.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

## CRIMINAL PROCEDURE (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 31 January 1996

李華明議員致辭:主席先生,《1996年刑事訴訟程序(修訂)條例草案》及《1996年精神健康(修訂)條例草案》於本年一月三十一日提交本局省覽。

兩項條例草案的目的是修訂《刑事訴訟程序條例》及《精神健康條例》, 使有關條文與英國的《1991年刑事訴訟程序(精神紊亂及不適宜申辯)法令》 趨於一致,使陪審團可決定不適宜申辯的被告是否曾作出被控的作為或曾有 被控的不作為,以及使法院除判處被告羈留在精神病院內,亦可考慮採用其 他多項處理方式,包括發出監護令、監管和治療令,以及無條件釋放令,並 使裁判官可採用上述的處理方式。

政府當局亦建議對《刑事訴訟程序條例》作另一項修訂,令須就亂倫案作證的兒童,可獲得與就"性侵犯"案作證的兒童證人同樣的保護。現時"性侵犯"的定義並不包括亂倫罪行。

以本人為主席的條例草案委員會曾召開四次會議,其中三次與政府當局 會晤。此外,並曾接見一個由香港社會服務聯會轄下各有關機構組成的代表 專。

我將簡述條例草案委員會研究的主要事項。

首先是有關《1996年刑事訴訟程序(修訂)條例草案》的研究事項。

議員關注擬議法例並未對"弱能"及"是否適宜交付審判"的定義作出界定,因而要求政府當局在法例內加入該兩個名詞的定義。

政府當局解釋,擬議法例是以英國法例為藍本,而英國法例並無對"弱能"及"是否適宜交付審判"兩詞作出界定。當局經再度考慮後,認為根據普通法闡釋此問題,較試圖作出明文規定為佳。然而,鑑於條例草案委員會對此事的關注,當局建議在《刑事訴訟程序條例》第75(1)條內,將"弱能"一詞界定為"除此條例所訂的情況外,會對接受審訊構成障礙的弱能情況"。此定義將適用於任何類別的弱能情況,包括缺乏與提供法律意見人士溝通的能力。

議員亦關注現行的擬議法例並無對弱智人士與精神紊亂人士加以區分。 政府當局表示,日後將在《精神健康條例》的修訂條例草案內就兩者作出區 分。

此外,根據《刑事訴訟程序條例》擬議新訂條文第75A(1)(a)條,若陪審團裁定被告為弱能,審訊便不應進行或繼續進行,而根據新訂的第75A(1)(b)條,陪審團須裁定被告是否曾作出被控的作為或曾有被控的不作為。進行此類"事實審訊"的目的,並非為裁定被告是否有罪,而是確保被裁定不適宜申辯的被告有機會被裁定曾否觸犯被指控的罪行,以免無辜人士只因精神不健全而被覊留在精神病院內。

議員亦詢問被告的親友可否作證,以及根據擬議條文第75A(1)(b)條, 有關方面將依循何種訴訟規則行事。政府當局在回應時答允加入新訂修文第75A(3)條,以澄清上述各點:

- (a) 根據第1(b)(ii)款可提出的證據,包括證人所提出的證供;及
- (b) 適用於刑事程序的法律,將同樣適用於根據第1(b)款而進行的任何程序。

#### 立法局 一 一九九六年六月二十六日

此外,香港律師會曾致函政府當局,詢問為何在新訂條文第75(4)條由同一陪審團負責裁定被告是否適宜申辯及是否有罪。當局經再度考慮後,決定應保留《刑事訴訟程序條例》現行條文第75(4)條有關陪審團的規定,並會為此提出一項委員會審議階段修正案。

至於有關《1996年精神健康(修訂)條例草案》的主要研究事項,有以下各項:

首先是評估被告是否適宜申辯的精神病科醫生的問題。議員均認為,評估被告是否適宜申辯的"兩名或以上的註冊醫生"應為精神病科醫生,原因是普通科醫生未必具備作出評估所需的專業知識。

政府當局指出,目前"精神病科醫生"一詞並無法定定義,亦無立法規定精神病科醫生須名列經批准的名冊內。然而,當局已接納條例草案委員會的建議,認為應最少有兩位精神病科醫生作證。當局會相應修訂有關的條文,並會把精神病科醫生界定為根據《精神健康條例》第2(2)條訂定的認可醫生名單上的醫生。

鑑於最近通過為法例的《1996年醫生註冊(修訂)條例》作出各項規定,包括必須設立專科醫生名冊,梁智鴻議員要求政府當局,當保安司稍後發言時,聲明日後倘設立專科醫生名冊,須作出修訂,將"精神病科醫生"重新界定為醫務委員會專科醫生名冊所指的醫生。政府當局答允一俟設立專科醫生名冊後,便會進一步考慮有關建議。

此外,委員會亦關心有關心理學家的意見的問題。政府當局曾應議員的要求,研究應否將心理學家亦包括在條例草案內,以便他們可提供意見。當局將修訂《精神健康條例》擬議新訂條文第44D(1)(ii)及44G(1)條,在"醫生"後加入"(或其他適合的有資格人士)",以便有需要時可要求心理學家提供意見。

香港社會服務聯會轄下的家長會,關注擬議的處理方式是否適用於適宜 申辯及被法院裁定有罪的弱智人士,以及有否為他們作出特別安排或提供自 新服務。

政府當局表示,擬議的處理方式只適用於那些不適宜申辯的人士,而非

適宜申辯的人士。適宜申辯的人士,若被法院裁定有罪,會按其所犯罪行的 刑罰規定被判刑。根據《罪犯感化條例》,法院可對此類人士發出感化令, 規定他們須在一段指定期間內,受感化官監管。適宜申辯及被定罪的弱智人 士,可被判覊留在監獄或教導所。若他們被判入獄,會將他們送往那些設有 心理學家的監獄,以便跟進他們的個案。若他們被判覊留在教導所,將安排 他們進入特別為此目的而設的教育及職業培訓班,以便有經驗及經特別訓練 的人員能監察他們的進展。

家長會亦關注,根據《精神健康條例》擬議新訂條文第44A(2)及44D(2)條,須首先獲得社會福利署署長及監管人員同意,才可將有關人士收容監護或進行監管。政府當局解釋,法院在發出監護令或監管和治療令前,社會福利署署長必須確保有足夠及適當的自新設施以執行該命令。擬議新訂條文第44A(2)條的目的,是當法院提出要求時,社會福利署署長可向法院作出建議,但他不能拒絕將有關人士收容監護。政府當局為消除代表團對此事的憂慮,將增設第44A(1)(c)(iv)條及第44D(1)(c)(iv)條,訂明社會福利署署長須向法院建議是否適宜對有關人士發出監護令,和表明能否物色適當的監護人。

政府當局為回應家長會對治療弱智(屬永久狀況)人士問題的關注,將會在《精神健康條例》擬議新訂條文第44C條內,進一步擴大"精神紊亂"一詞的定義,以便在監管和治療令下,就治療方面而言,該詞的定義擴大至包括因精神紊亂而引發的行為。此外,當局亦會在擬議新訂條文第44C條下,加入"治療"一詞的定義,以包括教育、培訓及行為管理。加入此項定義後,監管和治療令便可適用於弱智人士。

政府當局將會在委員會審議階段提出委員會審議階段修正案。條例草案 委員會支持各項修正案。

我謹此陳辭,請議員支持《1996年刑事訴訟程序(修訂)條例草案》及《1996年精神健康(修訂)條例草案》。

**SECRETARY FOR SECURITY**: Mr President, the Bill before us, in conjunction with the Mental Health (Amendment) Bill 1996, seeks to give High Court Judges, District Court Judges and Magistrates a wider range of disposal options in dealing with accused persons who are mentally disordered and who did the act or made the omission charged. This Bill also seeks to introduce measures to better protect child witnesses in incest cases from the trauma of

testifying in court.

I am grateful to the Honourable Fred LI and members of the Bills Committee for the great care they have taken in scrutinizing the Bill since it was introduced into this Council in January. This process has helped the Administration to fine-tune the Bill in a manner which better protects the interests of those whom the Bill is intended to benefit.

The Honourable Fred LI has just explained the suggestions of the Bills Committee, which the Administration accepts. In addition, we have also received comments from the Law Society of Hong Kong, which recommended that the questions of "fitness to plead" and "guilt" should not be determined by the same jury. We have carefully considered the views of both the Bills Committee and the Law Society, and concluded that the Bill should be revised on the basis of their suggestions.

The principal amendments in respect of this Bill which I will propose at the Committee stage are:

- (a) first, to provide a definition of "disability" along the lines of section 4(1) of the United Kingdom Criminal Procedure (Insanity) Act 1964. That definition has already been judicially interpreted in the United Kingdom and, as such, it is expected that the Hong Kong courts will follow the United Kingdom authorities. It is a very wide definition and will, therefore, include any mental disability which renders a defendant "unfit to be tried".
- (b) secondly, to ensure that the proposed legislation remains consistent with the existing law so that, in the High Court, the jury which determines the accused person's fitness to plead should not also then determine whether that person, having been found unfit to plead, is guilty of the offence charged;
- (c) thirdly, to specify that the medical practitioners who provide evidence should include at least two specialists in mental disorder;
- (d) fourthly, in cases where the accused has been found to be under disability and unfit to plead, to clarify that the purposes of the

proceedings then is to determine whether the accused did the act or made the omission charged, rather than to determine whether the accused committed the offence;

- (e) fifthly, to make it clear that evidence in such proceedings includes the testimony of witnesses; and
- (f) finally, to state explicitly that the criminal standard of proof, that is to say, beyond reasonable doubt, applies to such proceedings. These proceedings constitute essentially a "trial of facts", to ensure that the case against a defendant who is found unfit to plead is tested so as to avoid the detention of innocent persons in hospitals merely because they are mentally unfit.

There is one suggestion from the Law Society which we have not incorporated into the amendments. The Law Society suggested that a distinction should be made between an accused person who is under disability even though he did the act or made the omission charged, on the grounds that insanity should not be treated as disability and vice versa. The Administration does not consider such a distinction necessary. Under the present or the proposed law, insanity is not treated as disability or vice versa. disposal options proposed in the Bill will be equally available to accused persons found not guilty by reason of insanity, and to accused persons under disability who did the act or made the omission charged. There appears to be no good reason to restrict the court's ability to determine any of the five disposal options for an accused person falling into either category, as none of the disposal options is, in principle, inappropriate for an accused person falling into either category. The Law Society has accepted our explanation.

Finally, I would like to say a few words about the commencement of the new legislation. As Honourable Members would notice, the commencement date is not specified in face of the Bill but will be appointed by me by publication in the Gazette. The Administration shares Honourable Members' concern about the implementation date of the provision on incest in this Bill, and I intend to designate 28 June as the commencement date for that provision. This will facilitate early trial of incest cases, and enable witnesses to testify through a live television link in a room separate from the court room. As regards the provisions dealing with guardianship orders, and supervision and treatment

orders, the departments concerned will need about four months to set up the new arrangements for them and to ensure that they will operate smoothly. I, therefore, propose to set 1 November 1996 as the day for commencing the relevant provisions.

Mr President, I recommend the Criminal Procedure (Amendment) Bill 1996 to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

## MENTAL HEALTH (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 31 January 1996

**PRESIDENT**: Does any Member wish to speak? Although technically no Member has spoken on the Mental Health (Amendment) Bill 1996, when Mr Fred LI spoke on the Criminal Procedure (Amendment) Bill 1996, he spoke on both Bills. So I have decided to permit the Secretary for Security to speak for the second time if he wishes to.

**SECRETARY FOR SECURITY**: Mr President, the main purpose of this Bill, and its evolution through the Bills Committee are similar to the Criminal Procedure (Amendment) Bill 1996. I shall not go into the details here, but would again like to thank the Bills Committee for their constructive comments.

The Bills Committee has made suggestions to clarify and improve certain aspects of the Bill. The Administration has accepted the Bills Committee's suggestions and proposes to amend the relevant provisions of the Bill accordingly.

The principal amendments in respect of this Bill which I shall propose at the Committee stage include:

- (a) first, to clarify that it would be up to the court or the Magistrate to decide whether an order should be made, and the form of such an order, after considering the Director of Social Welfare's advice on the suitability of the order and the availability of a suitable guardian;
- (b) secondly, to add definitions of "mental disorder", "supervision" and "treatment" to make it clear that the definition of "mental disorder" covers mental handicap; and
- (c) thirdly, to specify that the medical practitioners who provide evidence should include at least two specialists in mental disorder. This amendment corresponds with a similar amendment which I proposed to the Criminal Procedure (Amendment) Bill 1996.

As I explained earlier, it is our intention that the provisions concerning guardianship orders, and supervision and treatment orders will come into effect on 1 November 1996.

Mr President, I recommend the Mental Health (Amendment) Bill 1996 to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

### IMPORT AND EXPORT (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### **CONTROL OF CHEMICALS (AMENDMENT) BILL 1996**

## Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### RESERVED COMMODITIES (AMENDMENT) BILL 1996

## Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### TRADE DESCRIPTIONS (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

# TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) BILL 1996

### Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### **CONSUMER GOODS SAFETY (AMENDMENT) BILL 1996**

#### Resumption of debate on Second Reading which was moved on 3 April 1996

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### **DUTIABLE COMMODITIES (AMENDMENT) BILL 1996**

# Resumption of debate on Second Reading which was moved on 14 February 1996

劉健儀議員致辭:主席先生,《1996年應課稅品(修訂)條例草案》的目的,是要令《應課稅品條例》的適用範圍更明確,另外亦刪除一些不合時宜的條款,提出以罰款代替訴訟的計劃、強化推定條文等,使執法機構針對應課稅的貨品,可以更方便及更有效地進行執法工作,以保障稅收。對於草案的立法精神,我是支持的,但對於草案中提出將的士剔除於公共交通工具的定義之外,使的士可以被海關檢取甚至被法庭充公的建議,我是強烈反對的。

主席先生,法律講求公正、公平,不應該有犯法者享有不被檢控的特權,更不應該有犯法者一人犯法而令無辜第三者受牽連。我先前提及草案內有關的士的修訂,正正是違反這基本法律原則。因此,我稍後會在委員會階段提出議案,刪除條例草案第9及第11條的修正,保留《應課稅品條例》第15(2)及19(2)條款的原文,使的士仍然可以繼續享有免被檢取及充公的權利。

根據《應課稅品條例》第15(2)及19(2)條,可被檢取及充公的車輛不包括公共交通公具,而的士及公共巴士被界定為公共交通工具,因此的士、小巴及大巴均享有豁免權。條例草案第9及第11條,擬議將的士納入可被檢取及充公的交通工具之一。換言之,的士如發現載有應課稅品,司機不但會被檢控,該的士也可能會被海關檢取,而海關更可以向法庭申請充公該輛觸犯《應課稅品條例》的的士。

條例草案明顯是針對近期引起關注的非法使用紅油情況。我非常支持政府打擊非法紅油的行動,但我認為條例草案第9及第11條的修訂,很可能會錯殺無辜,有違寧縱無枉的法律原則,更有殺雞用牛刀的意味,對絕大部分奉公守法的的士車主是極不公平的。

眾所周知,的士業普遍實施租車制;很多車主自己"踩"一更,另一更 則租給他人,亦有車主將兩更租給他人。倘若條例草案第9及第11條獲得通 過,縱使在車主毫不知情下,即使使用非法紅油的是租車的士司機,但無辜 的車主就可能成為代罪羔羊,其擁有的士 — 可能是他們唯一的生財工 具,可能會被政府檢取甚至充公。

有人認為海關在充公懷疑使用紅油的士前,法庭會作出公平的審訊,所 以不會存在車主冤枉被充公的士的情況。我並非不相信法庭會作出公正及公 平的審訊,不過即使車主最終能夠證明自己無辜而的士不被法庭充公,但正所謂"手停口停",車主依然要蒙受的士被檢取扣押所帶來的損失,這樣對他們絕對是不公平的。

此外,條例草案對以不同形式擁有的士的車主有厚此薄彼之嫌。根據過去法庭的判例,已獲銀行按揭的車輛,即使車主被證實觸犯《應課稅品條例》,但有關車輛亦不會被法庭充公,因為法庭認為銀行是無辜的第三者;因此若有關車輛是供車會當中,海關亦不會採取檢取或充公的行動。無形中這類車主享有特權。如果銀行可以是無辜的第三者,因此若有關車輛因而可獲豁免被檢取或充公,為何自資擁有的士的車主就不可以是無辜的第三者而享有同樣的豁免呢?這樣豈不是對這類車主更不公平。難道政府想迫所有的士都"上會",來逃避可能無辜被檢取或充公車輛的危險?

另外一點我希望大家考慮的,是草案是否合情合理。事實上,去年被拘控非法使用紅油的的士有178部,只佔全港一萬八千多部的士中的極少數。在此情況下,政府絕對沒有理由採用嚴重影響整個行業的苛例,來對付一小撮害群之馬。即使對付這些害群之馬,政府亦未必需要用到"拉人兼封艇"的嚴刑峻法,因為的士使用紅油始終並非十惡不赦的滔天大罪,只是有些司機抱着貪小便宜的心態,為慳一百幾十的油錢,而做出違法行為。更諷刺的是,更嚴重的罪行如打家劫舍,只是"拉人"而未致於"封屋",非法使用紅油就是否應該要封艇呢?尤其是當違例者並非一定是車主,而可能只是租車司機。

其實,除的士之外,貨運業亦普遍採用租賃制,很多貨車是租給別人使用的。現時這些貨車並不享有豁免被檢取及充公的權利,因此我先前就擬議條款對的士不公平及不合理的批評,亦同樣適用於貨車。政府應該作出全面的檢討,提出適當的修訂,以確保法律的公平性和合理性。

主席先生,我雖然為絕大部分奉公守法的的士司機及車主據理力爭,但這並不表示我認同非法的行為,姑息犯法者。《應課稅品條例》於九五年七月十九日曾被修訂,大大加重非法販賣或非法使用紅油的刑罰,最高刑罰是罰款20萬元及監禁兩年。現行法例雖然可說是已十分嚴厲,但從過去三年對非法販賣及使用紅油的檢控數字來看,罰款由二、三百元到數萬元不等,刑期最短是三天、最長是六個月。據知絕大部分被告都是罰款約1,500元了事。政府應該檢討現行刑罰是否對違例者收到足夠的阻嚇力,否則政府很應該尋求更有效方法針對真正犯罪者。當然,要杜絕濫用紅油情況,加強執法、勤於掃蕩是必須亦是最見效的,我十分希望政府能夠在這方面加一把勁,而不是加一把牛刀。

主席先生,我謹此陳辭,呼籲各位議員支持本人稍後在委員會階段提出 的修正。謝謝。

**MR RONALD ARCULLI**: Mr President, I wish to report to Honourable Members the deliberations of the Bills Committee on the Dutiable Commodities (Amendment) Bill 1996, of which I was elected Chairman.

The Bills Committee had a total of two meetings with the Administration. The Bill seeks to amend the Dutiable Commodities Ordinance by improving the governance of trade operations, enforcement action and revenue protection, as well as to update the Ordinance to bring it in line with recent developments.

Whilst members of the Bills Committee were generally in support of the Bill, in the course of the deliberations, members had concerns about a number of issues. It is not necessary for me to go into the details of those issues which the Administration has agreed to move Committee stage amendments, as these are to remove inconsistencies and ambiguities. I do wish, however, to highlight several points.

My colleague, the Honourable Mrs Miriam LAU, has highlighted the point concerning taxis which are of concern to the Committee as well.

One of the changes sought by this Bill is the transfer of the power to determine the conditions to be attached to liquor licences from the Governor-in-Council to the two municipal councils. Members of the Bills Committee were concerned that these two municipal councils might have their own policies and come up with different sets of licence conditions. On this point, the Administration advised the Bills Committee that the municipal councils will only be empowered to prescribe conditions which are necessary for licensing control but are at present not prescribed by the Governor-in-Council under section 6 of the Ordinance. Variation in licensing conditions might be justified if it is to cope with the different situations in the two municipal council regions or to have regard to the particular circumstances of the applicants.

Members also queried whether the amendments to the provision in respect of presumptions as proposed in clause 22 might have the effect of making it more onerous for the person being charged. According to the Administration's explanation, as the law now stands, the onus is on the defendant to prove to the contrary on the balance of probabilities that the presumptions should not apply.

The Bill provides that a quantum requirement be introduced where appropriate, and in parallel with other supporting evidence in triggering a rebuttable presumption about possession of dutiable goods. The quantum requirement is set at a sufficiently high level so that, in the absence of evidence to the contrary, there should be no doubt that the presumption should apply if the level is exceeded. In such circumstances, a person will then be presumed to be in possession of dutiable goods. The onus on the person charged is, therefore, less than that under the existing presumption provision.

The Administration has also confirmed that the proposed amendments are consistent with the right to presumption of innocence provided in Article 11.1 of the Bill of Rights Ordinance.

Mr President, with these remarks, I ask Honourable Members to support the Bill and the Committee stage amendment to be moved by the Administration and Mrs LAU.

陳鑑林議員致辭:主席先生,當局鑑於近年汽車使用"非法工業柴油"的情況嚴重,為了加強打擊,因此向本局建議修訂《應課稅品條例》。當局建議的修訂,其中被關注的是把的士納入可被"檢取"及"充公"的公共交通工具之一。如果當局的修訂獲得通過,當執法機關發現的士使用"非法工業柴油",即紅油時,該的士司機將會被"檢控",的士將會被"檢取",執法機關更可以向法庭申請"充公"該的士。

本人對於當局下決心打擊使用非法紅油是表示支持的,但今次的打擊範圍似乎過大。根據當局給予本局的資料,本年首四個月,每天平均只有 1.5 宗的士被檢控非法使用紅油,而目前在市面行走的港九新界的士共有 15 000 架次左右。換言之,因非法使用紅油而檢控的違法的士,只佔個整個出租車隊伍的萬分之一。因此,我們認為的士並不是使用非法紅油的主力。

本人認為"重典"的使用,應集中於打擊非法紅油的供應者,及大量使用非法紅油的運載工具上。當局的修訂建議並未能有效地達到上述目標,反而其副作用則會令無辜的車主成為代罪羔羊,本人極不贊成此舉。

#### 立法局 一 一九九六年六月二十六日

此外,目前對付非法販賣或使用紅油的最高罰款為 20 萬元及監禁兩年,其實已經非常足夠。此外,如果我們了解的士的營運模式的話,便會對這個問題有更為清晰認識。一般而言,一部的士會有多個司機以租車形式,每天在不同的時間進行經營,故此,車主可能要負起所有司機行為的責任,這樣對車主是非常不公平的。因此,本人稍後會贊成劉健儀議員的議案,刪除條例草案第 9 條及第 11 的修訂,保存《應課品條例》第 15(2)及 19(2)條款的原文,使的士仍可繼續享有免被檢取及充公的權利。

本人謹此陳辭,謝謝主席先生。

單仲偕議員致辭:主席先生,政府就《應課稅品條例》提出多項修訂,其中最具爭議性的地方是將的士納入可以被檢取和充公的交通工具之一。一九九五年涉及違反有關條例的車輛中,貨車的數字最高(240宗);的士排行第二(179宗),較九四年上升接近十倍。由此可見,的士非法使用紅油的情況是明顯地嚴重了,而且有上升的趨勢,因此,民主黨支持政府正視的士濫用紅油的情況,並且將對付私家車或貨車的扣押措施,擴展至的士,以加強阻嚇作用,打擊此類非法活動。

不過,劉健儀議員擔心政府這項修例,將會對車主不公平,因為的士是普遍實施租車制度的,假如的士司機非法使用紅油,在新條例下,其的士會有機會被政府檢取或充公,結果車主便會成為無辜的受害者。民主黨認為這個論點值得注意,並且應引伸至其他車輛。換言之,在現行條例下,貨車與客貨車等車主也可能成為代罪羔羊,蒙受車輛被扣押的損失。因此,民主黨支持政府修訂條例,打擊非法使用紅油的活動。另一方面,政府亦應要檢討現行的機制,免使車主無辜受罪。

對於劉健儀議員的修正建議,民主黨會投棄權票。劉議員的論點誠然值得考慮,但讓的士豁免在修訂的範圍,並非解決方法。首先,扣押是嚴厲的懲罰,有助打擊非法使用紅油,因此我們擔心即使車主兼司機觸犯法例,但如的士繼續免受扣押,的士使用紅油的情況仍可能會繼續惡化。同時,從公平的角度而言,的士應與其他車輛一樣,受到同樣相類似的處分。假如擔心車主無辜損失,我們建議政府應檢討現時的扣押車輛機制,並非透過豁免某一類車輛(如的士)來解決。

最後,我們民主黨促請政府公平地處理所有出租車輛,包括其他用作運輸行業的車輛,使這個情況能公平地獲得處理。所以,民主黨對劉健儀議員

的修正案會棄權。

**張漢忠議員致辭**:主席先生,就《1996年應課稅品(修訂)條例草案》,我們的同事陳鑑林議員已經指出民建聯的立場。在此我只想補充一些資訊。

對於打擊非法使用紅油,政府的決心是值得我們支持的。但對於政府所草擬的條例草案,民建聯認為須要有所保留,因為我們認為有關的草擬條款對的士車主過於苛刻,同時亦存在不公平的現象。民建聯認為香港的法律精神在於公平及公正,注重"一人做事一人當"的原則。但修訂後的條例,將會導至"黑狗偷食,白狗當災"的情況出現。現時在香港的士行業中,大部分的車主會將車輛租予職業司機經營,假如上述的草案通過的話,車主會在不知情的情況下蒙受損失。政府對付經營色情行業者,會引用有關條例,把經營色情行業的樓宇查封半年,亦不致於將有關樓宇充公。相比之下,上述的法例是過於苛刻,會嚴重打擊的士行業。

同時,有關的條例內容,又容許已向銀行按揭的的士,即使車主被證明是非法法使用紅油,亦可豁免不被充公車輛,無形中替有心違法者提供一個護身符,使原本自資擁有的士的車主,亦會與銀行安排按揭,因而使的士的經營成本加重。換言之,有關的條例草案未能堵塞打擊非法使用紅油的漏洞。

我們認為,打擊的士行業非法使用紅油,最簡單的辦法,莫如一旦發現的士行走時非法使用紅油,經法庭審訊定罪後,以扣分或甚至吊銷駕駛執照一段時間,以收阻嚇作用。

主席先生,民建聯將會於稍後時間,支持劉健儀議員的修正案。

謝謝主席先生。

**庫務司致辭**:主席先生,我要感謝夏佳理議員及條例草案委員會成員對本條例草案進行了詳細而迅速的研究。事實上,本條例草案有多項技術性的修訂,但委員會在一個月內舉行了兩次會議,便完成有關的研究工作。這樣的成績實在值得嘉許。至於委員會對本條例草案的支持,我們謹此深表謝意。

條例草案委員會向我們提供了很多寶貴的意見,因此,我將會在委員 會審議階段,提出數項經由條例草案委員會同意的修正案。屆時,我會解釋 提出這些修正的理由。我也會對劉健儀議員的修正案作出回應。

謝謝主席先生。

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### **Committee Stage of Bills**

Council went into Committee.

#### **COSTS IN CRIMINAL CASES BILL**

Clauses 1, 4 to 7, 10, 12, 13, 14, 17, 18 and 20 to 24 were agreed to.

Clauses 2, 3, 8, 9, 11, 15, 16 and 19

**ATTORNEY GENERAL:** Mr Chairman, I move that clauses 2, 3, 8, 9, 11, 15, 16, and 19 be amended as set out in the paper circulated to Members.

The amendment to clause 2 limits the scope of the definition of "wasted costs" to instances of failure to appear or lateness, without reasonable cause, leading to an otherwise avoidable adjournment on the part of any legal or other representative.

Clause 3 is amended by increasing the ceiling on defence costs in summary proceedings from \$15,000 to \$30,000 and by providing for future adjustments to be made by subsidiary legislation.

Proposed amendments

#### Clause 2

That clause 2 be amended, by deleting the definition "wasted costs" and substituting —

""wasted costs" (虛耗訟費) means -

- (a) any costs incurred by a party to the proceedings as a result of -
  - (i) any failure to appear; or
  - (ii) lateness,

without reasonable cause leading to an otherwise avoidable adjournment on the part of any legal or other representative or any employee of a legal or other representative; or

(b) any costs incurred by a party to the proceedings which, in the light of such failure or lateness occurring after they were incurred, the court or the judge considers it is unreasonable to expect that party to the proceedings to pay.".

That clause 2 be amended, in paragraph (b) of the definition of "虛耗訟費", by deleting "該法院" and substituting "法院".

#### Clause 3

That clause 3 be amended —

(a) in subclause (2), by deleting "\$15,000" and substituting "\$30,000".

- (b) by adding -
  - "(3) The Chief Justice may, with the approval of the Legislative Council, by order, amend the sum specified in subsection (2).".

That clause 3(1)(b) be amended, by deleting "決定" and substituting "裁定".

That clause 3(1) be amended, by deleting "該訟費" and substituting "訟費".

#### Clause 8

That clause 8(b) be amended, by deleting "passes a sentence substantially at variance with" and substituting —

"imposes a less severe punishment than".

#### Clause 9

That clause 9(2)(b) be amended, by deleting "passes a sentence substantially at variance with that passed" and substituting —

"imposes a less severe punishment than that imposed".

#### Clause 11

That clause 11 be amended —

- (a) in subclause (2), by deleting "\$15,000" and substituting "\$30,000".
- (b) by adding -
- "(3) The Chief Justice may, with the approval of the

Legislative Council, by order, amend the sum specified in subsection (2).".

#### Clause 15

That clause 15(b) be amended, by deleting everything after "一方" and substituting "為協助該法院或大法官而向該法院或大法官提交的對該方恰當地招致的訟費數額所作的評估;".

That clause 15(c) be amended, by deleting "被法院" and substituting "屬法院".

#### Clause 16

That clause 16(3) be amended, by deleting "包括" and substituting "為".

#### Clause 19

That clause 19(4) be amended, by deleting "推翻" where it twice occurs and substituting "撤銷".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 3, 8, 9, 11, 15, 16 and 19, as amended, put and agreed to.

Heading before PART VII

New clause 25 TRANSITIONAL

New clause 25 Transitional

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

ATTORNEY GENERAL: Mr Chairman, I move that the Heading before new

clause 25, and new clause 25 as set out in the paper circulated to Members be read the Second time.

New clause 25 adds a transitional provision to the Bill for the reasons I set out during the Second Reading debate early this afternoon.

Mr Chairman, I beg to move.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

**ATTORNEY GENERAL:** Mr Chairman, I move that the Heading before new clause 25 and new clause 25 be added to the Bill.

Proposed addition

#### New clause 25

That the Bill be amended, by adding —

# "PART VII TRANSITIONAL

#### 25. Transitional

This Ordinance shall not apply to criminal proceedings in respect of offences committed before the coming into operation of this Ordinance.".

Question on the addition of the Heading before new clause 25 and new clause 25 proposed, put and agreed to.

## CRIMINAL PROCEDURE (AMENDMENT) BILL 1996

Clauses 1, 2, 5, 6 and 7 were agreed to.

Clauses 3 and 4

**SECRETARY FOR SECURITY**: Mr Chairman, I move that clauses 3 and 4 be amended as set out in the paper circularized to Members.

The amendments contain the principal improvements to the Criminal Procedure (Amendment) Bill which I have already referred to in the Second Reading debate. They have been discussed in detail by the Bills Committee and have received the Committee's endorsement.

Mr Chairman, I beg to move.

Proposed amendments

## Clause 3

That clause 3 be amended —

(a) by deleting "section 75(4), (5) and (6) is repealed and the following substituted -" and substituting -

"Section 75 is amended -

- (a) by repealing subsection (1) and substituting -
  - "(1) This section applies where on the trial of a person the question arises (at the instigation of the defence or otherwise) whether the accused is under a disability, that is to say, under any disability such that apart from this Ordinance it would constitute a bar to his being tried.";
- (b) by repealing subsection (4), (5) and (6) and substituting -".

- (b) by deleting the proposed section 75(4)(a) and (b) and substituting -
  - "(a) where it falls to be determined on the arraignment of the accused person, then if the trial proceeds the accused person shall be tried by -
    - (i) where paragraph (a) of the definition of "court" is applicable, a jury other than the jury which determined that question;
    - (ii) in any other case, the same jury which determined that question;
  - (b) where it falls to be determined at any later time, it shall be determined by -
    - (i) where paragraph (a) of the definition of "court" is applicable, a separate jury or the jury by whom the accused person is being tried, as the court may direct;
    - (ii) in any other case, the same jury by whom the accused person is being tried.".
- (c) in the proposed section 75(5) by adding "(of whom not less than 2 shall be practitioners approved for the purposes of section 2(2) of the Mental Health Ordinance (Cap. 136))" after "practitioners".

## Clause 4

That clause 4 be amended —

(a) in the proposed section 75A, by deleting the section heading and substituting -

"Determination as to whether accused person

# under disability did the act or made the omission charged".

- (b) in the proposed section 75A(1)(a) by adding at the beginning "without prejudice to any proceedings for the purposes of paragraph (b)(ii),".
- (c) in the proposed section 75A by adding -
  - "(3) For the avoidance of doubt it is hereby declared that -
    - (a) evidence that may be adduced under subsection (1)(b)(ii) includes the testimony of witnesses;
    - (b) the law applicable in criminal proceedings shall be the law applicable in any proceedings arising under subsection (1)(b).".
- (d) in the proposed section 76(2)(a) by adding "(of whom not less than 2 shall be practitioners approved for the purposes of section 2(2) of the Mental Health Ordinance (Cap. 136))" after "practitioners".

Question on the amendments proposed, put and agreed to.

Question on clauses 3 and 4, as amended, put and agreed to.

## MENTAL HEALTH (AMENDMENT) BILL 1996

Clauses 1, 3, 4 and 5 were agreed to.

Clause 2

**SECRETARY FOR SECURITY**: Mr Chairman, I move that clause 2 be amended as set out in the paper circularized to Members.

The amendments contain the principal improvements to the Mental Health (Amendment) Bill which I have already referred to in the Second Reading debate. They have been discussed in detail by the Bills Committee and have received the Bills Committee's endorsement.

Mr Chairman, I beg to move.

Proposed amendment

## Clause 2

That clause 2 be amended —

- (a) in the proposed section 44A(1) -
  - (i) by deleting "Subject to subsection (2), where" and substituting "Where";
  - (ii) in paragraph (b), by adding "(of whom not less than 2 shall be practitioners approved for the purposes of section 2(2))" after "practitioners";
  - (iii) in paragraph (c) -
    - (A) in subparagraph (ii), by deleting "and" last appearing;
    - (B) in subparagraph (iii), by deleting "him," and substituting "him; and";
    - (C) by adding -
      - "(iv) the advice of the Director of Social Welfare on -
        - (A) the suitability of an order under this section in the case of the person;

## 立法局 一 一九九六年六月二十六日

and

- (B) where applicable the availability of a suitable person to be authorized under paragraph (i) if there is an order under this section in the case of the person,".
- (b) by deleting the proposed section 44A(2).
- (c) in the proposed section 44C by adding -

""mental disorder", in relation to treatment, includes behaviour manifested by a mental disorder;

"supervision" includes care;

- "treatment" includes education, training and behaviour management."."
- (d) in the proposed section 44D(1)(b) by adding "(of whom not less than 2 shall be practitioners approved for the purposes of section 2(2))" after "practitioners".
- (e) in the proposed section 44D(1)(c) -
  - (i) in subparagraph (ii), by deleting "and" last appearing;
  - (ii) in subparagraph (iii), by deleting "him," and substituting "him; and";
  - (iii) by adding -
    - "(iv) the advice of the Director of Social Welfare on
      - (A) the suitability of an order under this section in the case of the person;

- (B) where applicable, the availability of a suitable person acting under the Director of Social Welfare's authority under paragraph (i) if there is an order under this section in the case of the person; and
- (C) if there is an order in the case of the person, the arrangements that will need to be made for the treatment intended to be specified in the order,".
- (f) in the proposed section 44D(1)(ii) -
  - (i) by adding "(or other appropriately qualified person)" after "practitioner";
  - (ii) by deleting "condition" and substituting "disorder".
- (g) by deleting the proposed section 44D(2).
- (h) in the proposed section 44G(1) -
  - (i) by adding "(or other appropriately qualified person)" after "practitioner";
  - (ii) by deleting "condition" and substituting "disorder".
- (i) in the proposed section 44I, by adding ", a relative of the supervised person" after "application of the supervised person".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, put and agreed to.

## **IMPORT AND EXPORT (AMENDMENT) BILL 1996**

Clauses 1 and 2 were agreed to.

## **CONTROL OF CHEMICALS (AMENDMENT) BILL 1996**

Clauses 1 and 2 were agreed to.

## RESERVED COMMODITIES (AMENDMENT) BILL 1996

Clauses 1 and 2 were agreed to.

## TRADE DESCRIPTIONS (AMENDMENT) BILL 1996

Clauses 1 and 2 were agreed to.

# TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) BILL 1996

Clauses 1 and 2 were agreed to.

## **CONSUMER GOODS SAFETY (AMENDMENT) BILL 1996**

Clauses 1 and 2 were agreed to.

## **DUTIABLE COMMODITIES (AMENDMENT) BILL 1996**

Clauses 1, 4 to 8, 13 to 23 and 25 to 45 were agreed to.

Clauses 2, 3, 10, 12 and 24

**庫務司致辭**:主席先生,我謹動議依照發送予議員的文件所載的提議,修正草案第2、3、10、12及24條。

條例草案第2(d)條的修正,旨在刪除法例中過時的用詞。

草案第3(1)條的修正,旨在清楚訂明納入法例適用範圍內的炭氫油類。

草案第10(4)及12(2)條的修正,旨在使凡出現 "exercise all such diligence (盡充分努力)"之處,均以"take all reasonable steps (採取一切合理步驟)"取代,從而更正確地反映法例的目的。

草案第12條的修正包括加入新增的第(1A)款及修正第(3)款;有關修正旨在於條文內加入"train(火車)"一詞,使火車會一如船隻、車輛或飛機等其他運輸工具般,以同一準則受到《應課稅品條例》中有關貨品搬動的管制。

草案第24條的修正,旨在確保有關以罰款方式代替訴訟的各項條文用詞 一致。

主席先生,我謹動議議案。

# Proposed amendments

## Clause 2

That clause 2(d) be amended, by deleting "and "railway" and substituting ", "railway" and "by rail".

## Clause 3

That clause 3(1) be amended, by deleting proposed subsection (1)(c) and substituting —

- "(c) the following types of hydrocarbon oil -
  - (i) aircraft spirit;
  - (ii) light diesel oil;
  - (iii) motor spirit; and
  - (iv) kerosene; and".

## Clause 10

That clause 10(4) be amended, in proposed subsection (11), by deleting "exercised all such diligence" and substituting "took all reasonable steps".

#### Clause 12

That clause 12 be amended —

- (a) by adding -
  - "(1A) The proviso to section 23(1) is repealed and the following substituted -
    - "(1A) Goods put on board any ship, vehicle, train or aircraft under a permit are not to be relanded except under a permit.
    - (1B) Subsection (1) does not apply to duty-paid goods after their first removal within Hong Kong from the ship, vehicle, train or aircraft on which they were imported."."
- (b) by deleting subclauses (2) and (3) and substituting -
  - "(2) Section 23(2) is repealed and the following substituted -

- "(2) Where an offence of removing, discharging or delivering any goods from any ship, vehicle or aircraft contrary to subsection (1) is proved to have been committed, every person being an owner, charterer, agent, master or other person in charge or comprador of the ship, vehicle or aircraft is deemed guilty of that offence in the absence of evidence that the goods were removed or discharged without his knowledge and that he had taken all reasonable steps to prevent such removal or discharge."
  - (3) Section 23(3) is amended -
    - (a) by repealing "Goods" and substituting "In the absence of evidence to the contrary, goods";
    - (b) by adding ", train" after "vehicle".".

#### Clause 24

That clause 24 be amended, by deleting proposed section 47B(1)(b) and substituting —

"(b) persons whom the Commissioner has reason to believe have committed an offence and the offence has been compounded under section 47A.".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 3, 10, 12 and 24, as amended, put and agreed to.

## Clauses 9 and 11

委員劉健儀議員致辭:主席先生,本人動議修正草案第9及11條,修正內容一如文件所載。有關我今次提出修正的原因,剛才在二讀辯論時,我已詳細論述,在此不再重複。

庫務司在剛才二讀辯論時,提到會在委員會階段時,回應我這項修正。我很相信代表政府的庫務司不會反對我這項修正,因為其實政府已經向研究草案的委員會很清楚表達他們願意撤銷草案第9和11條,不過政府說它不想操刀,由議員去做,而我今天提出這項修正,其實是秉承條例草案委員會所吩咐而做的,並非我個人的行為。

我想借此機會回應剛才二讀辯論時單件偕議員所提出的一兩個論點。 單議員提出如果有檢取和扣押權力的話,就可以減少的士濫用紅油的情況。 但我想問單議員,如果非法使用紅油的是司機,而這個司機是租車來用的, 那車輛是否被充公、是否被檢取,那司機根本不會關心,亦不會太過擔個設 轉主可以有能力控制司機,但在的士業內,司機並非車主的僱員,而司機是 會自行去加油的,車主根本無法控制司機的行為。此外,單議員似乎迴避 會自行去加油的,車主根本無法控制司機的行為。此外,單議員似乎迴避了 剛才我在二讀辯論時所提出的論點,就是政府擬議草案的第9和11條,效果 可能製造成不公平的情況,禍及無辜。這點建議,單議員是完全沒有作出回 應的。難道單議員覺得香港應實施一個"寧枉毋縱"的制度?但我很相信單 議員是支持"寧縱毋枉"的制度的,也是民主黨應該支持的,我希望單議員 和民主黨可以回心轉意。於此,雖然單議員和民主黨不能夠支持我這項修 正,但亦感謝他們不予反對,投棄權票,不過,我仍然希望他們能夠回心轉 意,支持我這項修正。謝謝。

## Proposed amendments

## Clause 9

That clause 9 be amended, by deleting the clause.

#### Clause 11

That clause 11 be amended, by deleting the clause.

Question on the amendments proposed.

委員涂謹申議員致辭:主席先生,我亦代表民主黨回應一下劉健儀議員剛才的觀點。我們為何投棄權票呢?基本上基於法理的觀點,其中一個很重要的原因,是我們覺得如果支持劉健儀議員將的士納入豁免的範圍,即換言之,當一個的士車主兼司機(他自己駕駛一更)駕駛他自己那一更而非法使用紅油時,其實亦都會受豁免。我們覺得這情況絕不公平,也不能有效打擊車主兼司機違例的情況。這是我們認為很重要的原因。

我們亦看到劉議員的觀點,即如果車主與司機是分開的話,如果兩更都 租出去的話,車主是不能控制司機,司機或自行加油(並非由車主負責), 這是行內的制度。所以,我們亦看到其中困難之處。其實,政府現在提議將 其豁免,或如劉議員所說,完全將的士豁免,兩者都不能夠針對問題的核 心。這是我們投棄權票的原因。

然而,我們亦重申希望政府密切監視這情況,一旦發現車主兼司機的濫用情況及違例的情況轉趨嚴重的話,屆時我希望政府勇於提出修例。同時,亦希望政府能顧及的士車主兼司機與其他行業的車主兼司機的相對不公平情況。

庫務司致辭:主席先生,的士使用非法柴油,因而觸犯《應課稅品條例》的違法行為有所增加。為解決這個問題,我們已增加海關的資源,加強打擊此類不法活動並提高有關最高罰款。此外,我們亦在提交議員審議的條例草案中加入條文,以便當局能夠根據現時施用於私家車或貨車的相同準則,將牽涉於違法行為中的的士扣押。不過,我們與條例草案委員會討論時,得悉部分議員關注到建議的修訂,對的士行業及有關的分期付款按揭業務可能構成影響。我們認為,的士有關違法情況實在嚴重,而基本上亦沒有理由不把的士與其他車輛劃一處理。而現時沒收車輛的條文內亦對有關人士有足夠的保障。不過,在考慮過所有因素後,我們同意部分議員所表示的關注亦不無道理。因此,我們打算暫時不採取建議中的行動,而對劉健議員提出的委員會審議階段修正案亦不表示反對。

儘管如此,我們會密切監察有關情況,並可能於有需要時,再次提出該 建議或其他可行的方法。

謝謝主席先生。

Question on the amendments proposed, put and agreed to.

Question on clauses 9 and 11, as amended, put and agreed to.

Council then resumed.

## Third Reading of Bills

THE ATTORNEY GENERAL reported that the

## **COSTS IN CRIMINAL CASES BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR SECURITY reported that the

# CRIMINAL PROCEDURE (AMENDMENT) BILL 1996 and

# MENTAL HEALTH (AMENDMENT) BILL 1996

had passed through Committee with amendments. He moved the Third Reading of the Bills.

立法局 一 一九九六年六月二十六日

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

**IMPORT AND EXPORT (AMENDMENT) BILL 1996** 

**CONTROL OF CHEMICALS (AMENDMENT) BILL 1996** 

RESERVED COMMODITIES (AMENDMENT) BILL 1996

TRADE DESCRIPTIONS (AMENDMENT) BILL 1996

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) BILL 1996 and

## **CONSUMER GOODS SAFETY (AMENDMENT) BILL 1996**

had passed through Committee without amendment. She moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

THE SECRETARY FOR THE TREASURY reported that the

## **DUTIABLE COMMODITIES (AMENDMENT) BILL 1996**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

#### **MEMBER'S MOTIONS**

## HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993 (NOS. 1 AND 2)

## DR LEONG CHE-HUNG to move the following motion:

"That the Standing Orders of the Legislative Council of Hong Kong be amended in Standing Order No. 19 -

- (a) by repealing paragraph (6) and substituting -
  - "(6) If a Member is not present to ask his question when his name is called the question may with his consent be asked by another Member, but otherwise shall be treated as a question for which a written answer has been sought.";
- (b) by repealing paragraph (8) and substituting -
  - "(8) A Member who has given notice of a question may withdraw the question by giving notice to the Clerk before 1.00 p.m. on the day of the sitting at which the question is to be asked."."

**DR LEONG CHE-HUNG**: Mr President, I move the resolution standing in my name on the Order Paper. The purpose of the resolution is to amend Standing Order 19(6) and (8) concerning arrangements for handling questions requiring an oral reply at the Legislative Council sitting.

The proposals have been considered by the Subcommittee on Procedural Matters and endorsed by the House Committee. Under the existing Standing Order 19(6), if the Member is not present to ask his question when his name is called and if the Member has not made prior arrangements either for another Member to ask the question or to treat the question as a written question, that question shall be deemed to be withdrawn.

However, this arrangement is considered to be impracticable because at the time when it is known that the Member is not present to ask his question, the Administration's reply to the question has already been placed at Members' seats and distributed to the press. It is therefore proposed to amend the Standing Order to the effect that unless the absent Member has made prior arrangement for another Member to ask the question, that question shall be treated as a question seeking a written reply.

Under the existing Standing Order 19(8), a Member who has given notice of a question may withdraw the question by giving notice in writing to the Clerk at any time before the relevant sitting or by informing the President orally during Question Time. To allow Members greater flexibility in the manner in giving the withdrawal notice, it is proposed to amend the Standing Order to the effect that an oral question may be withdrawn on notice given either in writing or orally by the absent Member to the Clerk to the Legislative Council before 1 pm on the day of the relevant sitting.

With these remarks, Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

## INTERPRETATION AND GENERAL CLAUSES ORDINANCE

## MR FRED LI to move the following motion:

"That the Waterworks (Amendment) Regulation 1996, published as Legal Notice No. 176 of 1996 and laid on the table of the Legislative Council on 15 May 1996, be amended in section 4, in new Part III -

- (a) in item 1(a), by repealing "\$7.77" and substituting "\$7.11";
- (b) in item 1(e), by repealing "\$5.01" and substituting "\$4.58";
- (c) in item 1(f), by repealing "\$5.01" and substituting "\$4.58";

(d) in item 1(g), by repealing "\$5.01" and substituting "\$4.58"."

李華明議員致辭:主席先生,我謹依照議事程序表,動議我名下的議案。

《1996年水務設施(修訂)規例》旨在將水費、水管接駁費及其他服務費分別增加9%及12%,由一九九六年七月一日起生效。

內務委員會為研究此條規例而成立一個小組,並由本人出任主席,小組舉行了兩次會議,其中一次是與當局進行的。小組委員會各委員對未來數年水務設施經營費用每年的預計增幅超逾10%,以及對預計固定資產平均淨值的每年增幅,均表示十分關注。由於水務設施現時的營運是有盈餘的,各委員質疑是否有需要進一步增加水費。

政府解釋該項盈餘僅為一項假定數字,其中約一半(為數26億元)來自從差餉所得收入,以及由政府向所有住宅用戶提供的一項免費用水津貼,即首12度免費用水。如果沒有這些由政府提供的津貼,水務設施的營運其實是有虧損的。政府解釋,基本工程的增加及折舊,在經營費用每年的增幅中,佔用一個重大的比例。向中國大陸購買食水的支出約佔經營費用35%。當局強調建議的水費增幅溫和,百分比亦低於一九九五年二月至一九九六年七月期間的預計通脹率10.6%。即使在實施建議新收費後,水務設施在一九九六至九七年度的固定資產平均淨值的實際回報率也僅會為4.2%,較目標回報率6.5%為低。當局並進一步指出,在實施新收費後每年所得約2.24億元的額外收入,最終會以不同形式用於市民身上。

不過,小組委員會各委員卻並不接受當局的解釋,委員認為從差餉所得收入不能單被視為由政府提供的津貼,因為市民本身正是繳付差餉者。即使是次建議增加收費不獲通過,水務設施的營運仍會有5.892億元的盈餘,而其固定資產平均淨值的預計回報率,在一九九六至九七年度則可達3.3%。

此外,今天香港正面臨經濟衰退,失業率高企,基層市民生活困難,所以,小組委員會決定動議議案,否決政府今次提出增加水費。我今天來開會前,亦收到不同黨派議員,工職會或其他團體遞交的信件,要求我們否決水費增加,我還收到民主黨的24 000名市民簽名;這些簽名就在這裏,這正好反映民間團體、政治團體、政黨和工人團體都很一致地反映市民的困難,都要求本局否決今次增加水費。

## 立法局 一 一九九六年六月二十六日

在考慮當局的解釋和建議增加水費對用戶,尤其是飲食業的影響之後, 小組委員會一致認為,除航運業用水外,食水水費應維持在目前的水平。至 於接駁水管及其他服務的費用,由於此等費用對消費者來說並非經常性開 支,所以,小組委員會各委員認為這一類加費可以接受。

所以,主席先生,我會就兩方面動議議案,第一個部分是,凍結工商業 用水、建築用途用水,及船泊用水的費用。這部分共有四項費用凍結,我提 出凍結工業用水費用。第二部分則是,住宅用水費用的凍結。

我謹此陳辭,希望各位議員能夠支持這項議案。

**PRESIDENT**: Mr Fred LI, you are moving two motions?

李明議員:主席先生,我是否可以一次動議兩項議案呢?

**PRESIDENT**: You have given notice to move two motions. I am not sure which is your first one.

李華明議員:主席先生,讓我說出我議案中的建議好嗎?我提出的第一項議案是進行四項修正的,第一項是1A,廢除7.77元而代之以7.11元;第二項是1E,廢除5.01元而代之以4.58元;第三項是1F,廢除5.01元而代之以4.58元;第四項是1G,廢除5.01元而代之以4.58元,這四類都是工商業和建築用途用水,這就是我的第一項議案。

## Question on the motion proposed.

**張漢忠議員致辭**:主席先生,食水是我們生活中不可缺少的東西。水費增加 必然影響民生,政府當局對水費進行調整,有必要作出一個審慎的決定。民 建聯經過深思熟慮和審慎的研究後,決定支持擱置住戶及商戶增加水費的議 案。

最重要的原因是,我們認為政府提出增加水費的理據是不能接受的, 經過分析,我們發覺過去數年,即使政府不增加水費,水務署仍然有數億元 盈餘,政府當局則指這些盈餘是用於改善供水服務及供水基建的開支,特別是用於新市鎮的發展之上。在新市鎮發展上,政府利用水費的盈餘承擔提供供水系統的開支,但在土地拍賣有數十億元收入後,政府則將這些收益撥作一般性收入,完全沒有撥款繼續用於開發及改善供水系統之上,這樣做又是否公平呢?

另一方面,政府指出,現時生產、輸送每一度水的費用為八元,而向住戶收取的費用每度為4.5元,修訂之後則為4.9元,換言之,政府已給予住戶每度三元的津貼。表面看來,政府非常慷慨,但實際上這是個邏輯上的錯誤。因為帳目上,有15%差餉收入撥歸水務署帳目,而政府則以這15%差餉收入支付每度食水的生產費用的不敷之數。即使住戶、商戶不繳納水費亦要繳納差餉。其實,住戶是在用自己繳納的差餉來支付水費,所以政府說津貼市民的水費,在邏輯上是說不通的。

在考慮香港整體市道,經濟放緩,和市民對加費的承受力後,民建聯 會支持擱置增加住宅、商戶用水收費的議案。

本人謹此陳辭。

**陳榮燦議員致辭**:主席先生,政府大幅增加水費引起市民的極大反應。今天經濟不景,很多人失業,直接影響民生,令市民百上加斤。尤其對用水量多的行業,例如酒店、飲食業、漂染業,影響更嚴重。

昨天晚上,我出席一個飲食業工會團體的會慶活動時,有一群廚師及管理人員圍着我,他們指出近期食物中毒個案頻生,除了各種因素以外,"刻意"節約用水是導致食物中毒的其中一個原因。我完全同意這群廚師的看法。除了注重個人衞生以外,以充足用水來處理、洗濯食物、用具、家具及沖洗場地,是能夠減少食物中毒發生的機會的。

剛才我提到"刻意"節約用水,大家都知道水費又增加,還有排污費、排污附加費等,令飲食業人士正在呼叫救命。在這時期,僱主都勸諭員工減少用水以減低成本,試想想,廚師的工作有多困難?食物中毒的機會真的會增加,而且較以前為多。

主席先生,剛才立法局門外非常熱鬧,有大批團體來立法局請願,反對

## 立法局 一 一九九六年六月二十六日

政府大幅增加水費、排污費及排污附加費。我手上有1萬個簽名,是剛才在立法局門外,由14個飲食業工會團體的代表交給我的。

這些是14個飲食業工會,在上兩個星期內,天天花時間到酒樓食肆向員工取得的簽名。他們簽名的文件,內容包括反對政府增加水費、排污費及排污附加費。這14個工會的代表將這份1萬人的簽名交給我,是希望我在立法局替他們說幾句話。這叠簽名有1萬人的心聲和意見,他們都希望今天各位議員在投票時否決水費增加,而下星期三,即七月三日,就排污費及排污附加費投票時,亦希望各位議員反對政府加費。

這1萬個簽名,全部來自酒樓、食肆的員工,當然也包括管理階層和部分僱主。他們踴躍簽名,正好說明他們對政府的做法,擬表達強烈不滿。

主席先生,本人和工聯會及剛才張漢忠議員代表的民建聯都支持修正案,反對政府增加水費的議案。我們亦希望立法局內各位同事共同支持這次反對政府增加水費的議案。

本人謹此陳辭,謝謝主席先生。

**PRESIDENT**: I can see the pile of signatures which may be rather heavy.

**陳榮燦議員**:的確是很重的,主席先生,其情意之深,使我一直將之拿在手中不肯放棄,希望各位議員支持。

**PRESIDENT**: I wish you would put the signatures away now and the same goes for Mr Fred LI, now that you have made your points.

田北俊議員致辭:主席先生,我手裏拿着的,只是今天的議程,一個簽名也沒有。主席先生,我們現在正在談論水費問題,我很欣賞在李華明議員英明的領導下,要求凍結所有水費加價。所謂加價,包括所有市民日常用水的費用和陳榮燦議員最關注的酒樓老闆及僱員要多付的水費,但也同時凍結所有工業界用水的加費。為了這個理由,自由黨和工商界全力支持這個決定,謝

謝主席先生。

工務司致辭:主席先生,水是日常生活的必需品,我們每天都需要大量用水,作住宅和非住宅用途。對促進本港經濟增長的社會各界來說,水是不可或缺的。本港六百多萬人口中,約有99.7%獲得食水供應。一九九五年的全年總耗水量約9.4億立方米。

儘管我們有"龐大"的集水及配水系統,包括兩個以抽乾海水的方法 建成的大型水塘、15個一般水塘、18個濾水廠、無數的管道和喉管,以及約 佔本港三分一土地的集水區,但我們的用水,仍無法自給自足。

自六十年代起,我們便向中國購買用水,以彌補不足。為方便分配及 貯存來自中國的供水,政府建造了一系列供水隧道、管道、喉管及抽水站。 多年來,政府在購買用水、配水及供水方面,已作出重大投資。

除了需要大量資源及資金來營運供水系統,提供濾水及用戶服務外, 政府亦須定期維修及改善供水系統,以提供可靠及高效率的服務,並就日後 的需求進行規劃。

在制訂水費政策時,我們已清楚知道,供水不但是一項不可或缺的服務,同時也是一種需要。政府的目標是,要在審慎運用納稅人的金錢之餘,也能確保為用戶提供可靠而高效率的服務。為達致這個目標,政府訂立了適當的業務計劃,包括資本投資、設施維修及用戶服務等項目。

水是其中一種生活必需品,我們在制訂業務計劃時,已深明此理。因此,我們採用分級收費的制度,以便為用戶免費提供某用量的食水。此外,有些用戶的耗水量超過按生活基本需要評估的用量,他們大多只須繳交按成本或低於成本計算的費用。事實上,約有80%住宅用戶完全無須繳交水費,或只須繳交低於成本或按成本計算的水費。只有耗水量很大的個別用戶,水費才訂在高於成本的水平。這項政策是要令不懂珍惜用水的用戶或沒有珍惜食水的用戶繳交較多水費,減少用戶浪費或漫無節制地用水。

處理和輸送用水給住宅用戶,每度用水的費用目前約為八元,這個數額並未把回報率(即資金成本)計算在內。即使在計算成本時扣除折舊因素,

## 立法局 一 一九九六年六月二十六日

每度用水的開支仍需7.4元左右,不過,現在向住宅用戶徵收的水費,平均每度只是4.5元。在實施調整水費的建議後,每度將增至4.9元。這個數額其實仍遠遠低於上述成本。

一直以來,在收回成本方面出現的大幅差額,基本上是由政府一般收入和差餉撥款支付。水費豁免額的費用,便是由政府一般收入支付。一九九六至九七年度,政府一般收入及差餉在這方面的撥款,分別約為4億元及24億元。

目前,住宅用戶在若干程度上是補貼非住宅用戶的。政府的立場,是住宅用戶或其他收益來源不應資助牟利機構,而建議調整收費,消除現時這種補貼現象,正好反映政府這個立場。這不是商業問題,而是對納稅人、繳納差餉人士及住宅用戶是否公平的問題。事實上,一九九五年初加入研究檢討水費的1995年水務設施(修訂)規例小組委員會的立法局議員,也曾要求政府盡早消除這種補貼現象。

因此,當局在計算建議的水費調整額時,曾充分考慮若干實際因素,包括用戶的負擔能力。建議增幅對各階層用戶需繳付的費用,影響其實很微。

我們估計,在住宅用戶方面:

- 一 約16%用戶仍然無須繳交水費;
- 一 有40%用戶每月只須繳交35元或更少的水費,比現時多繳付三元。以平均有四名成員的家庭來說,每名成員每月只須多付不足一元水費;
- 一 有20%用戶每月繳付少於68元的水費,比現時多繳五元。對於一般的家庭來說,每名成員每月只須多付略高於一元的水費。

建議增幅對非住宅用戶亦只有輕微影響。加費後估計耗水量大的工業 (包括漂染業),以及酒樓食肆的營運費用只會略為上升,增幅分別佔總營 運成本的0.28%及0.07%。

這個溫和增幅,符合我們所奉行的低水平收費政策,更重要的是,也 能貫徹我們的承諾,確保向用戶提供可靠及高效率的服務。按政府的建議調 整食水和其他有關服務的收費後,可逐步消除住宅用戶補貼非住宅用戶的現 象,使收費制度更趨完善。同時經濟能力較差的人仍可免費獲供應足夠的食 水,以應付基本需要。此外,增加收費後,我們對差餉及稅收兩方面所需的 撥款亦相應減少,因為所有直接使用者,不論住宅用戶或非住宅用戶,都需要承擔實際應繳付的費用,這樣才符合"用者自付"的原則,而這原則亦獲得議員及市民的接納和支持。

我們根據平均固定資產淨值(即政府在水務設施方面已投入和會繼續投入的資金),來衡量能否達致所訂的目標。平均固定資產淨值的回報只屬資金成本,並非利潤幅度。訂出一個合理的回報率,是完善的理財方法,而6.5%的回報率基本上能適當反映這類資產的市場情況。

李華明議員提出的修正案導致一個情況,就是除遠洋船舶用途的水費外,一切非住宅用途的水費均無法增加,這樣會嚴重阻礙我們達致業務計劃及希望平衡各方利益的目標,這個目標在上文已有闡述。住宅用戶將須繼續補貼非住宅用戶。現行收費與處理及輸送食水實際所需的成本,兩者之間出現龐大差額,如不按照政府的建議,對水費作出極有必要的調整,便無法改善現有情況,而政府在水務方面的虧蝕將會更大。

我們上一次調整水費是在九五年二月,至今已有17個月,如不能增加水費,我們甚至無法調整這段期間內由通脹帶來的影響。縮減資源不僅對我們的服務,特別是維修訂劃,造成不良影響;也會阻礙其他服務改善措施。為應付日後需求,政府須進行更多改善工程,但從服務所得的經費,將不足以應付這方面的開支,結果須由繳納差餉人士及納稅人額外補貼,我們認為這種安排對他們極不公平,當然這樣做也不能貫徹執行"用者自付"的原則。

主席先生,政府在制訂有關的政策和建議時,已採取務實而審慎的態度,相信我們現在的方向是正確的。我謹請議員慎重考慮上文提及各點,支持政府原來的建議,對水費作出十分溫和但極有必要的調整,並否決李華明議員提出的修正案。

謝謝主席先生。

**庫務司致辭**:主席先生,今天有議員就水務署調整水費建議,提出兩項議案 予以否決。我不打算在每一項議案辯論時發言,但我想借此機會重申政府在 公用事業回報率上的立場。

與其他私營公用事業一樣,水務是一個資本密集的公用事業,資本是需要成本的。因此,政府的公用事業也需要一個目標回報率,以便反映資金成本及有效地監察有關政府部門,在財政及管理上的表現。政府在釐訂目標回報率時,已經盡量在公共理財和社會訴求這兩者之間取得平衡。

## 立法局 一 一九九六年六月二十六日

鑑於水是生活的基本需要,水務署的目標回報率,訂於無風險回報率水平,現時是6.5%,實在是非常合理的。更何況調整水費之後,水務署在九六至九七年度的回報率,只是4.2%。

議員反對調整水費的其中一個理由是,水務署在加費前,已經有3.3%的回報率,或6億元盈餘。我必須指出這回報率或盈餘,是計算政府提供限額免費用水和差餉津貼等各項補貼後的帳面盈餘。

事實上,正如工務司所指出,如果撇除了政府的補貼,供水服務根本是 虧本的。九六至九七年度的虧損數目,估計大約是22億元。如果凍結水費的 增加,政府收入會每年減少2億元,是一個龐大的數目。為了彌補這方面的 損失,我們可能要降低水務署的服務水平,以節省開支,謝謝主席先生。

**MR JAMES TIEN**: Mr President, may I seek your consent to seek an elucidation from the Secretary of Works from something he has just said?

**PRESIDENT**: I regret you have missed the opportunity. You should have raised it after the Secretary for Works has finished his speech.

李華明議員致辭:主席先生,我想簡單回應工務司及庫務司的意見。我很高興,庫務司和工務司基本上與我有一個共識,就是同意"水"是基本需要,是必需品,無論就住宅或非住宅而言。我們有這個共識,才可以進行商討。

但是,我並不同意庫務司很多時候用政府投資的資本概念與私人的公用 事業來作比較。政府的資本投資一定會獲得回報。"水"是必需品,兩位司 憲也沒有否認這個事實,因此,政府有責任向市民提供這種需要。

政府說津貼來自差餉,而剛才張漢忠議員亦指出,差餉中撥給"水"的部分,只是"左袋給右袋"。同時,現時我們不斷討論的加幅,只是0.9%的回報率。(因為如批准所有政府提出的加價,會達到4.2%回報率,如不批准,則亦有3.3%回報率),我們要斟酌的只是相差0.9%的回報率。我很不明白為甚麼政府要這樣堅持。

我在此表示,議員們只是特別提出及反映今天社會的問題。政府的論點是這次加幅十分溫和,低於通脹或僅追上通脹水平。但是,我們不要忘記,普羅大眾,尤其是工人階級的薪酬加幅是不是每次都高於通脹或追得上通脹呢?如果每項公用事業加價都緊貼通脹率,而市民的工資卻絕對不會提升至通脹水平的話,那麼,他們的生活質素就變相不斷下降。

即使他們的工資加幅剛好追上通脹,亦只會反映他們的生活水平被凍結在今天水平上,絲毫沒有改善。何況我們可以很明顯地看見,有一些工友,尤其是製造業工友,他們的實質工資是下降了的。這樣,他們不單止未能跟上通脹,還受到多種公用事業強調的加幅僅與通脹看齊所影響。各項加幅累積起來,積少成多,對普羅大眾或基層家庭便造成很大壓力。因此,希望政府能夠體會這一點。

這一次,無論是代表工商界、工會或來自不同黨派的議員,都集中一起,就這項議案提出我們的要求。我再一次呼籲各位議員支持這項議案,同時,我向政府表示十分抱歉,我們要動議這項議案。

Question on the motion put and agreed to.

## INTERPRETATION AND GENERAL CLAUSES ORDINANCE

# MR FRED LI to move the following motion:

"That the Waterworks (Amendment) Regulation 1996, published as Legal Notice No. 176 of 1996 and laid on the table of the Legislative Council on 15 May 1996, be amended in section 4, in new Part III -

- (a) in item 1(b) -
  - (i) in paragraph (ii) by repealing "\$4.51" and substituting "\$4.16";
  - (ii) in paragraph (iii) by repealing "\$7.00" and substituting "\$6.45";

- (iii) in paragraph (iv) by repealing "\$9.82" and substituting "\$9.05";
- (b) in item 1(c)(ii) by repealing "\$5.01" and substituting "\$4.58"."

李華明議員致辭:主席先生,我謹依照議事程序表,提出我的第二項議案。

剛才我已就負責研究本規例的小組委員會的研究結果作出解釋,並說明 因何建議把水費維持在目前的水平上,我現在不擬作進一步解釋。第二項議 案是關於住宅用途用水。多謝主席先生。

Question on the second motion moved by Mr Fred LI proposed.

工務司致辭:主席先生,正如李華明議員剛才所說,我相信我剛才已詳細說明主要論點,我只想利用很少時間,再說明一下我們的看法。

李議員提出的議案,旨在使住宅用戶的水費無需增加。議案的目的顯然 是為了照顧民生,使市民能繼續以極低收費享用經處理的食水。誠如我較早 前說過,政府清楚知道,供水既是一項服務,亦是一項需要。因此,我們仍 會維持現時低水平的收費政策,並繼續奉行分級收費制度,以照顧用戶的不 同需要,包括為用戶提供足夠的水費豁免額。然而,為了減輕水務方面的虧 蝕,實有必要調整現行的水費。

我重申我們建議的加幅相當溫和,不會令用戶承受不合理的負擔。調高水費後可調整通脹對水務經營帶來的影響,如能連同其他的調整收費建議一併實施,應能使我們的收費制度更趨完善,達致合理和平衡的收費水平,長遠而言,更能減輕繳納差餉人士和納稅人在水費方面的承擔,最終必能令社會大眾受惠。

因此,我衷心促請議員支持政府輕微調整住宅用戶水費的原有建議,多 謝主席先生。

Question on the motion put and agreed to.

#### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

# DR JOHN TSE to move the following motion:

"That in relation to the Sewage Services (Sewage Charge) (Amendment) Regulation 1996 and Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 1996, published as Legal Notices Nos. 199 and 200 of 1996 respectively and laid on the table of the Legislative Council on 29 May 1996, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance for amending subsidiary legislation be extended under section 34(4) of that Ordinance until 3 July 1996."

謝永齡議員致辭:主席先生,我謹依照議事程序表,動議我名下的議案。

《1996年污水處理服務(排污費)(修訂)規例》旨在把消費者須付的訂明排污費率,由每立方米耗水量1.2元增加至1.38元;凡消費者的樓宇是接駁至政府擁有及維修的公共溝渠或公共污水渠的,是項加費均告適用。《1996年污水處理服務(工商業污水附加費)(修訂)規例》則以同一幅度增加向各工商業徵收的工商業污水附加費率,有關收費率已在該規例附表1中訂明。兩條規例均由一九九六年八月一日起生效。

內務委員會為研究此兩條規例而成立的小組委員會,曾與當局舉行過兩次會議。為使小組委員會能有充分時間考慮各項擬議加費,以及聽取各有關團體的意見,小組委員會建議延展修訂此兩條規例的限期至一九九六年七月三日。

主席先生,我謹動議議案。

Question on the motion proposed, put and agreed to.

#### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS SELINA CHOW to move the following motion:

"That in relation to the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996, published as Legal Notice No. 224 of 1996 and laid on the table of the Legislative Council on 5 June 1996, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of the Ordinance until 10 July 1996."

MRS SELINA CHOW: Mr President, I move the motion standing in my name on the Order Paper. The Hotel and Guesthouse Accommodation Fees (Amendment) Regulation 1996 involves a change in fee structure and substantial increase for some operators.

Members of the Subcommittee formed to study this Regulation have identified issues which require further consideration. To allow time for the Subcommittee to consider these points in depth, to seek further clarification from the Administration, to report to all Members of this Council and for all Members to consider all the points considered and recommendations made in the report, and adequate time for amendments to be moved if so wished by any Member or Members, it is necessary to extend the time allowed for making these amendments and considerations to the subsidiary legislation until 10 July 1996.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

#### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

# MR JAMES TIEN to move the following motion:

"That the Waste Disposal (Charges for Disposal of Chemical Waste) (Amendment) Regulation 1996, published as Legal Notice No. 167 of 1996 and laid on the table of the Legislative Council on 8 May 1996, be amended by repealing section 2 and substituting:

"2. Charges for disposal of chemical waste other than special chemical waste

Schedule 1 to the Waste Disposal (Charges for Disposal of Chemical Waste) Regulation (Cap. 354 sub. leg.) is amended in column 3 by repealing "1,589", "97", "30", "500", "773", "26", "389", "779", "1,391" where it twice appears, "573", "194", "4,051", "11,344" where it twice appears, "581", "4,862" and "430" and substituting "1,907", "116", "36", "600", "928", "31", "467", "935", "1,669", "688", "233", "4,861", "13,613", "697", "5,834" and "516" respectively."."

**MR JAMES TIEN**: Mr President, I move the motion standing in my name on the Order Paper.

Firstly, I would like to report on behalf of the Subcommittee set up by the House Committee to study the Waste Disposal (Charges for Disposal of Chemical Waste) (Amendment) Regulation 1996, of which I was the Chairman. The Subcommittee completed its deliberations in one meeting in which it met eight deputations of the affected trade and industries and discussed with the Administration the views presented by these deputations.

This Amendment Regulation proposes a 35% increase in charges for disposal of chemical waste by the Chemical Waste Treatment Centre(CWTC), except for the treatment of certain types of chemical waste, which had all along been charged on the basis of full recovery of the variable operating cost(VOC). The proposed increase is made up of a 5% increase in VOC recovery rate to 25%, and an increase in line with inflation. It is the long-term aim of the Administration to achieve full VOC recovery at the end of the eighth year following the implementation of charging, that is, by the year 2003-4.

The deputations are concerned that the financial burden resulting from the high percentage increase will pose difficulties to the industries, some of which may be forced to cease operation. They are also concerned about the lack of transparency with regard to the assessment of the operation of the CWTC, particularly its efficiency and the calculation of its cost, to which the industries are being asked to contribute.

Furthermore, they have not been involved in discussions with the Administration about its policy on chemical waste disposal and related charges

until recently. Seven out of the eight deputations present requested that CWTC charges be frozen.

Nevertheless, the Hong Kong General Chamber of Commerce considers that the Government should maintain a balance between environmental protection and survival of industries, and proposes that the overall rate of increase for 1996-97 should be about 20%. It further proposes that the VOC recovery rate should be increased by only 10% per annum, that is, a 2% in VOC recovery rate to 22% for 1996-97.

In view of the proposal by the Hong Kong General Chamber of Commerce, the Subcommittee requested the Administration to provide the projected figures regarding its effect on public expenditure for the next 10 years for circulation to all Members for reference in due course.

A majority of the members of the Subcommittee supported the Amendment Regulation as proposed by the Administration.

Mr President, now I would like to turn to a motion which I intend to move in my personal capacity.

Mr President, three years ago when we were consulted on a bill to regulate chemical waste disposal, our business leaders were for it but with caution and discretion: caution in that we did not want an idea to become too dogmatic, that it might stifle industry; discretion in that we had to wait for the Environmental Protection Department to describe what exactly the scheme entails. Not once throughout the consultation exercise did we reject the "userpays" principle as long as the costs we were to bear were transparent and be phased in over a sensible timeframe to lessen the impact.

The Government had tendered the work and operation of the CWTC to a private consortium. The consequence is the centre in Tsing Yi on which the investors have been promised guaranteed substantial return on their venture. We were told, too, at the time the centre would not be a monopoly. Companies would contract an assignment out to smaller firms or install in-house scrubber equipment, but ultimately the centre has developed into a virtual monopoly having captured 90% of the market.

At the beginning, the Government provided an environmental subsidy by shouldering 80% of the chemical waste disposal cost. The user paid 20%. The notion was that companies should be coerced, not forced, to comply with environmental requirements. The emphasis on carrot rather than on stick is the better option. By spring this year, the rate equation was, however, changed to 75% on the Government and 25% on user. A meeting with the Administration took place in late May and the result was disappointing. With inflation factored in, and the Government is determined to factor this in, the actual increase for the year is a shocking 35%. If, for example, a company which last year paid \$100,000 to dispose of its waste, this year it will shell out \$135,000 for the same quantity of work.

The Government argues that the centre's operating costs are skyrocketing. Between 1993 and the last fiscal year, the variable operating costs have risen more than threefold to \$337 million, and the fixed operating cost has shot up from \$135 million to \$175 million. There has been no offer to establish a special committee comprising industrialists, other users, EPD to monitor the centre.

Mr President, over the past couple of weeks, we have received comments from seven major commercial organizations and each has recounted the same moves. One of them contended that a medium bleaching and dyeing factory generally has about 10 to 20 tonnes of waste alkaline a day. At a current rate of about \$600 a tonne, such a factory must pay between \$6,000 to \$10,000 a day for chemical waste disposal. The alkaline is also not toxic and has commercial applications if recycled. However, this is not permissible because of rigid EPD guidelines.

These factories are not only concerned about the present but about the future if the Government sticks to its full cost recovery plan by 2004. There has already been a spate of dyeing and textile factories closures triggered by the escalating costs of doing business in Hong Kong. More on the edge and everyone will suffer, including some of those 386 000 of our workers still in the manufacturing sector.

To illustrate more pointedly, let me cite an example—the South China Dyeing Factory which shut down last year. They were producing 100 tonnes of

chemical waste in 1995 and paid to the centre on average \$42,000 a day or between \$1.2 million to \$1.8 million a month. The factory managers then added in the trade effluent surcharge and a total environmental bill came out to more than \$2 million a month. The charges became so crushing and, together with other reasons, South China decided to close the business altogether.

The Democratic Party is backing the campaign to suspend increases on trade effluent surcharge which will otherwise rise by 15%. They are also likewise supporting a freeze on sewage charges for domestic users who might otherwise have to pay 18% more this year. At the same time, the Democratic Party has told the Subcommittee of this Council that it is opposed to my resolution today. The Democratic Party's inconsistent approach suggests to me that there is a lack of policy coherence about environmental protection amongst them.

Factory owners are like restaurants and the average family with escalating expenses and obligations to meet. Those forced out of business must sack their workers whose interests the Democratic Party and the unionists claim to represent. The absence of logic here baffles me. The Government cannot create jobs. Only the private sector can.

Mr President, I do not accept the crude choice between business versus the environment. The two are not mutually exclusive. There is no contradiction. When we deal with jobs and cleaner air as well as water we really can have the cake and eat it too. My constituents are far from the stereotype of heartless corporations dumping refuse and pumping untreated effluents in far away countries. I think I have done my bit by persuading my constituents to accept the 20% increase, not 35% increase on their chemical waste disposal fee for this year.

Many of my constituents have pushed for a freeze and rightly so, because I repeat, their conditions are no different from caterers and home users of water. They are now willing to make that sacrifice and make do with a heavier cost burden because they are willing to assume responsibility for the environment. As far as I can ascertain, the submission to 20% increase is recently unprecedented in this Council where a cap on rates and fees is the standard demand.

Let me emphasize that we are for "user pays", but as long as the principle is flexibly applied and the period for cost recovery can be prolonged to a reasonable period. I have also convinced them that, in politics, we sometimes have to sue for the obtainable rather than cry for the impossible, that is, zero percent increase.

With these words, Mr President, I appeal to the Council to support the resolution under my name.

Question on the motion proposed.

**MISS CHRISTINE LOH**: Mr President, there are two proposals before us today; one from the Administration and the other which the Honourable James TIEN has just spoken about. The issue is not really about the principles of polluting a place any more, but only how the charges should be adjusted for the coming year.

It is agreed by all that chemical waste treatment charges are a part of the costs of doing business for the trade. Thus there is no justification for using public funds to subsidize private business. Mr TIEN's amendment would extend the variable operating cost recovery period from nine to 17 years at a public cost of about \$810 million.

Having said that, the Administration must return to this Council next year, of course, for approval of next year's increases. It is held that the Administration will continue to liaise closely with the trade in order to increase transparency of the charging scheme and also to consider how to better provide assistance to smaller business to reduce pollution, thereby reducing their treatment costs overall.

With these words, Mr President, I will support the Administration's proposal today.

葉國謙議員致辭:主席先生,民建聯的立場是支持"污染者自付"這項原則。政府為了收回化學廢物處理中心的運作成本,以及不致令納稅人補貼"污染者"而將收費逐步提高是值得支持的。

## 立法局 一 一九九六年六月二十六日

但是民建聯同時懷疑"收回成本"的速度應否一定要在一個特定的時段內追回。對在過程中不顧及其他客觀條件,而大幅增加處理化學廢物的收費35%,民建聯則持保留態度。政府為了要在八年內追回成本,罔顧現時香港經濟正陷入低潮,各行各業為求生存無不想盡辦法開源節流。近期,公司、工廠裁員倒閉的消息已成為現時香港經濟的一個寫照。現時,政府為求在指定時間內收回成本,將收費增加得這麼高,難免未能顧及香港現時的工商業實況,特別是將現時處於夕陽階段,令人感覺到其面前困難重重的香港工業進一步推向深淵。

民建聯認為一個負責任的政府理應顧及整體社會的利益,平衡各方面利益。如果只着眼於收回成本而大幅加費,無疑會令這些工業團體在現時經濟不景氣情況下"雪上加霜"。今天政府在經濟不景氣及工業萎縮的情況下,仍然只用慣常的"不干預政策"來推卸挽救香港工業的責任,這做法會進一步削弱本土工業的競爭能力,必然對本港整體發展產生不良的影響。所以民建聯認為政府對扶助本地工業發展是責無旁貸的,政府理應積極支持和鼓勵香港工業的發展。

民建聯認為今次田北俊議員提出20%加幅較為溫和,也較為合理,加上 工商業團體亦清楚表明他們可以接受,所以,民建聯對田北俊議員的修正案 表示支持,謝謝主席先生。

謝永齡議員致辭:主席先生,長久以來,民主黨都是一個支持環境保護的政黨,並且贊成政府以"污染者自付"原則,向污染者收取處理費用。我們認為生產化學廢物的廠商在賺取利潤的同時,亦應該注意保護環境。既然化學廢物是在廠商進行經濟活動的情況下產生的,這些廢物的處理費用亦應被視為廠商運作成本的一部分,收費有助將這些界外成本在界內反映;同時,收費可以作為化學廢物生產者減少廢物的誘因。

另一方面,政府將化學廢物處理中心的成本回收率由20%增加至25%,並且定於二零零四年收回全部變動運作成本。民主黨認為是溫和及可以接受的安排;相反,如果將成本回收期延長至17年,普羅大眾便需要額外多負擔9億元,對市民來說是絕對不公平的。因此,民主黨將不會支持田北俊議員的修正案。

主席先生,民主黨關注有關部門並沒有向廠商提供充分的技術援助,幫 助廠商直接減少化學廢物。 現時化學廢物處理中心的運作欠缺透明度,公眾及廠商均無法對中心的 運作及經營效率作出監管。民主黨促請政府有效監管化學廢物處理中心的運 作,並且加強中心的競爭能力。

剛才田北俊議員批評民主黨政策不一致,只支持凍結水費及排污費,而不支持化學廢物處理費用的增加。其實,兩類收費是不同的,因為,水費和排污費是收回100%成本,而化學廢物處理費只收回成本的25%,所以,主席先生,我們只會支持政府提出的原議案。

規劃環境地政司致辭:主席先生,《1996年廢物處置(化學廢物處置的收費) (修訂)規例》闡明在化學廢物處理中心處置化學廢物的修訂收費,有關這項修訂規例的小組委員會亦已對此規例進行詳細研究,我首先謹向該小組委員會致謝。

化學廢物處理中心在一九九三年啟用,在初兩年免費為廢物產生者提供服務,讓他們有時間適應廢物處理的新概念,把廢物處理的費用計算在運作成本,並對作業方式作出所需的調整。根據污染者自付原則,以及利用經濟因素,鼓勵廢物產生者盡量減少產生廢物、把廢物重覆使用及循環再用。政府於一九九五年三月推行一項分期實施的直接收費計劃,凡在化學廢物處理中心處置化學廢物者均須繳付費用。主席先生,我必須強調,這項收費計劃,是在廣泛徵詢有關行業的意見及與立法局討論取得本局同意後才推行的。

初期的收費釐定在收回化學廢物處理變動經營成本20%的水平。固定經營成本(一九九五至九六年度為1.67億元)及基本費用(13億元)將全部由政府承擔。立法局亦同意政府的建議,把有關收費逐步提高,以期最遲在二零零三至零四年度,收回全部變動經營成本。在該次討論中,有不少議員認為收回全部變動經營成本的日期應盡量提前。

為配合最遲在二零零三至零四年度收回全部變動經營成本的計劃,政府在一九九六年五月八日提交本局省覽的修訂規例建議修訂有關收費,把變動經營成本的回收率由20%調高至25%,但是,我們亦要兼顧通脹率方面,因而把8%的通脹調整率計算在內。因此,建議的收費較現行收費增加35%。

田北俊議員議案旨在修訂上述修訂規例,把建議的變動經營成本回收率由25%減至22%左右,亦希望變動經營成本回收率其後每年增加10%,另按通脹調整有關費用,直至收回全部變動經營成本為止。政府十分關注這項建議所帶來的影響。

第一,調低一九九六至九七年度的變動經營成本回收率,加上其後數年回收率的增幅又較低,將使逐步提高回收率至收回全部費用的年期大為延長,由九年延長至17年。

第二,廢物產生者應致力減少產生廢物的經濟動機將會降低,導致化學廢物處理中心須處理更多廢物,對收費計劃所希望達致的環保目標難免有所影響。根據自推行收費計劃以來所得經驗,廢物產生者確有考慮處置化學物的費用,並有其他廢物產生者尋求其他較相宜的方法,例如在廠內處理化學廢物及採用能產生較少廢物的技術等,藉以減低這些費用。如果推延採用逐步提高的變動經營成本回收率,這些廢物產生者很可能不會那樣積極進行減少廢物的工作。

第三,把收回全部變動經營成本的年期延長,政府便需提供額外資助,而這筆款項需要由納稅人承擔。我們相信,這筆額外的政府資助,在一九九六至九七年度將達1,200萬元,而以長達17年的整段期間來說,更會高達9.05億元。向使用化學廢物處理中心的行業提供如此龐大的資助,實難以向納稅人交代。

因此,政府認為,無論對廢物產生者的影響,對使用化學廢物處理中心所產生的抑制作用,以及對污染者自付原則的要求,政府的建議已取得合理的平衡。修訂的收費理應不會對有關行業構成沉重負擔,因為現行的化學廢物處置收費額只佔這些行業經營成本的極少部分。或許我們可以看看一些事實,環境保護署的帳單紀錄顯示,自這項收費計劃於一九九五年三月開始實施以來,在所發出的帳單當中,超過70%的帳單所涉及的收費金額少於1,000元,另有20%的帳單所涉及的收費金額則少於5,000元。而沒有達10萬元的現象。此外,我們不要忘記,政府只會以循序漸進的方式,向有關行業增收費用,以彌補化學廢物處理中心的變動經營成本。至於固定經營成本及基本費用,則會繼續由政府全部承擔。

主席先生,最後,我想再次提出,立法局曾建議政府留意能否把收回

全部變動經營成本的日期推前。財務委員會曾在一九九四年十二月提出這項意見,而政府帳目委員會在一九九五年十一月審議核數署署長有關化學廢物收費計劃的報告時,亦提出相同意見,政府目前所建議的,正是把本局提出的意見付諸實行,另一方面,我們亦十分多謝剛才各位議員對化學廢物處理中心運作所發表的意見,例如政府應加強監管,增加廢物處理中心的透明度。我十分多謝這些意見,而政府亦會繼續跟進這事。

主席先生,我謹此陳辭,呼籲各位議員反對這項議案。謝謝。

庫務司致辭:主席先生,規劃環境地政司已經清楚地解釋,今次的收費調整,對有關行業,只會帶來很輕微的影響。我必須強調,今次的加幅雖然是35%,但新的收費只足夠讓政府收回處理化學廢物的25%變動經營成本。換言之,其餘75%變動經營成本及全部固定經營成本,仍然要由政府補貼。具體來說,在九五至九六年度,納稅人替製造化學廢料的人士提供近1.2億元的補貼。

我深信議員大體上支持"污染者自付"原則。在"污染者自付"的原則下,政府理應盡快悉數收回成本,特別是變動經營成本。不過政府亦理解到,有需要靈活地處理收回成本的速度,以減低對有關行業造成的影響。所以,我們只計劃從九四至九五年度起,以大約九年時間,即二零零三至零四年之前,逐部收回全部變動經營成本。

正如規劃環境地政司所指出,在一九九四年十二月初,財務委員會就政府建議對處理化學廢物作出額外撥款的討論時,曾要求政府加快收回處理化學廢物的全部變動經營成本。在一九九五年十一月,政府帳目委員會亦敦促政府盡快分期收回處理廢物的變動經營成本。言猶在耳,我們無法不為今天的議案感到意外。

總括來說,今次的議案不符合議員過往對政府的要求,對納稅人不公平,亦對政府保護環境的工作有所損害。因此,我懇請各位議員支持政府的立場,否決議案。

田北俊議員致辭:有關行業對政府所建議的收回成本政策,從來沒有異議,

但所謂"收回成本",又有誰知道甚麼是成本呢?目前CWTC的經營是沒有人監管的,政府答應給它一個專利回報率。現在,90%生意是它的。

我們不太明白怎可能在三年前開始營運時的成本只是1.1億元,今年已增至3.3億元。這些成本根本是透明度極低的。要工商界付款,他們是不服氣的,政府又說,每間廠只須繳付千多元,只是少數目。但政府有沒有留意到三年前有八千多個戶口繳付這費用,而今天已跌至六千多個,已經少了近千間。政府又說,可以鼓勵廠家,減低化學廢物,但事實上,這會不會成事呢?

這些工廠大部分設於多層樓宇,沒有可能在自己廠內設立這些設施,被 迫接受這間CWTC公司的服務。可以估計,現在他們樂意支付千多二千元, 但如將來再增加收費的話,他們便會把污水倒進溝渠。

政府花了兩年時間,免費讓這些化學工廠(大部分是五金廠和電鍍廠) 使用設施,其實只不過想知道這些公司的名稱。若第一天便開始收費,可能 一間廠也"捉"不着。現在,這些公司陸續倒閉,政府這個計算方法便出現 矛盾了。如再增加收費,會使更多公司早些倒閉,更多公司倒閉,剩下來的 公司,便要繳付更多費用。例如,現在的收費是600元一噸,如有一半公司 倒閉,收費便要增至1,200元,不用再計算通脹,再計算所會增加的20%至 100%了。

去年,華南染廠結束經營時,正繳付200萬元,如果繳足100%的話,便要繳付1,000萬元了。若所有廠家看到這個趨勢,便會"走得快,好世界"。不單止今年增加35%,政府要達致二零零三年的目標,便要年年增加35%,這樣,才可以在二零零三年時收回全部成本。

在這情況下,我們覺得有需要為這些廠擔心。最惡劣的情況就是結束營業,現在還有幾萬人在這些工廠就業,他們會怎樣呢?而且,會拖累下游製衣行業,那些工人也會失去工作。那些工人大部分都已四、五十歲,我覺得再培訓對他們沒有甚麼作用。到時候,這些工人全部都會加入失業行列了。

謝謝主席先生。

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr James TIEN claimed a division.

**PRESIDENT**: Council shall now proceed to a division.

**PRESIDENT**: Members may wish to be reminded that they are now called upon to vote on the question that the motion moved by Mr James TIEN to amend the Waste Disposal (Charges for Disposal of Chemical Waste) (Amendment) Regulation 1996 be approved.

**PRESIDENT**: Would Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

**PRESIDENT**: Before I declare the result, Members may wish to check their votes. The result will now be displayed.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Henry TANG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU and Mr NGAN Kam-chuen voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine

LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE PRESIDENT announced that there were 18 votes in favour of the motion and 35 votes against it. He therefore declared that the motion was negatived.

#### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

**PRESIDENT**: Mr LEE Cheuk-yan had originally given notice to move a motion to amend the District Court Equal Opportunities Rules published as Legal Notice No. 236 of 1996 and laid on the table of this Council on 5 June 1996. He gave instructions to the Clerk yesterday to withdraw the notice. We will proceed to deal with motion debates.

**PRESIDENT**: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 24 June. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, where applicable. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his or her speech.

#### INDUSTRIAL SAFETY

# MR TSANG KIN-SHING to move the following motion:

"本局極之關注近日香港多宗引致工人傷亡的嚴重工業意外,並促請政府:

- (a) 採取緊急行動,防止嚴重工業意外再次發生;
- (b) 對工業意外傷亡者家屬提供各種所需協助;及
- (c) 加強執法和嚴懲違反工業安全法例人士,以收阻嚇作用。"

曾健成議員致辭:主席先生,本人根據議事程序表動議議案。首先,多謝局內多位同事,給予這個機會討論工業安全的問題。

主席先生,今天的天氣非常炎熱,氣溫高達攝氏30度,希望沒有工業 意外發生。

我想藉着這個機會,對政府一直以來在工業安全政策方面的嚴重失誤,表達我的憤怒。

近數個星期以來,接二連三發生的工業意外傷亡事件,引發社會輿論 對職業安全及健康問題的關注。在許多人的心目中,以為似乎除這個黑色六 月外,日常的工作安全及健康問題並非太驚人及並非嚴重。而政府亦可振振 有詞,借機以"天氣熱,於是有這麼多意外"等似是而非的籍口,企圖掩人 耳目。

但事實上,近十年的工業意外傷亡數字,頗為驚人,平均每年有80個工人因工傷死亡,有五萬多宗傷亡事件,這數字確實反映"政府的無能、工人的無助"。政府在沒有輿論壓力下,竟然對白紙黑字的統計數據,不屑一顧,硬要大家"唔見棺材唔流眼淚"。這麼多傷亡數字是否因為世界性的溫室效應而發生的呢?

每一次地盤出現人命傷亡的意外,當我在電視或是到現場、醫院,看到死傷者的家屬,痛哭流涕,悲痛欲絕,就好像有一塊石頭,擱在我心內很長的時間使我感到不舒服。但是,政府官員往往在輿論壓力下照例做一輪秀(show),避過社會人士的批評。我想問一句,各位官員,你們都有妻子、兒女,請問面對因為政府長期缺乏配套的工業安全政策而引致工友傷亡的事件,你們心裏會好受嗎?

十多年前,九龍灣德福地盤吊人籠發生意外,六名工人死亡,結果到 九三年又再發生北角籠較意外,引致十多名工人死亡,政府才制定監管法 例。這就是我們的政府在工業安全上的標準態度 — 只有人命的損失, 才能夠換到政府踏出一小步。財政司往往在每年預算案中炫耀香港的經濟繁榮,香港的平均本地生產總值已踏入西方先進工業國水平,但我們的工業安全紀錄卻永遠停留在發展中國家的水平。就以新機場的工程為例,過去一年內已有12名工友付出生命來換取代價。我作為香港人對此也感羞愧,但各位官員仍好像無動於衷。

對於今天的辯題,民主黨會提出一些實際的政策建議,希望各位官員 認真聽取,不要再在聽取過後,要等到發生意外時,便慣性地召開甚麼跨部 門會議,搞些雞毛蒜皮的建議來回應社會壓力。

本人今天的發言會集中在預防工業意外的措施方面。近日,多宗工業 意外發生後,本人與建造業安全管理學會會員進行公開研討,就加強建造業 工業安全謀求對策。本人總結了以下幾點方案:

## 第一,一個地盤安全與否,牽涉到三方面的人士:

- 對承建商而言,單憑宣傳是無補於事的。在利潤掛帥,追求工作進度為首要目標的情況下,由開始時十多天建造一層樓,到現時四天建造一層樓的工作進度,工業安全只有靠邊站,因此,政府要從懲罰、監督的角度來規管承建商;
- 2. 對安全人員而言,政府要賦予他們足夠的專業權力去執行安全政策;
- 3. 對工友而言,在職安全意識的培訓至為重要;
- 4. 保障工友投訴施工程序安全的權利。

以下是我的具體建議:

#### 對承建商加強監管

目前雖然政府會對違反工業安全條例的承建商作出懲罰,但罰則太過 寬鬆,要違例承建商在六個月內被成功檢控六次才禁止投標三個月。這做法 收效甚微,無法使承建商提高安全意識。我認為應採納扣分制度,凡觸犯安 全法例,便按嚴重程度扣分,一旦滿分則禁止投標,並加長禁止投標時限, 過往數千至數萬元的罰款完全沒有阻嚇力。對承建商來說,一項工程涉及過 億元或10億元的金額,一萬數千只是小數目,近乎"搔癢",難怪無法杜絕工業意外頻生。

#### 強制聘用安全主任

凡超過100名工人的地盤需強制聘用安全主任一名,並設遞增比率。按照目前機場核心工程的模式,安全主任人數按工人比例遞增。舉例說:每100名工人聘用一名安全主任,300名工人兩名主任,500名工人三名主任,如此類推。

鑑於目前安全主任人手未必足夠應付,全港有5 000個地盆,合資格的安全主任只得一千二百多人,而且只得400人在職。本人建議政府逐步實施,先立法確立這目標,然後分階段執行。同時,建造業訓練局應增加助理安全主任培訓數目。

#### 安全主任獨立運作

目前,安全主任受聘於僱主,除沒有實際法定權力外,僱主亦不需要跟從安全主任的專業建議。安全主任近乎無權無責,安全主任正身在"可有可無","有好過無","無亦無所謂"的處境。我建議參考新加坡模式,安全主任仍由地盤僱主聘用,但其運作、權責則向勞動廳交代,新加坡地盤安全主任甚至有權因僱主違反工業安全而發出停工令。香港可以逐步採納此模式,將安全主任獨立於僱主之外運作,向勞工處定期匯報。此舉有助安全主任應用對地盤安全的知識,不用受制於僱主。而且,更應立例保障工友在投訴施工程序及安全標準時,不能被無理解僱。

主席先生,長遠而言,政府應考慮提升安全主任專業地位,以配合增加安全主任權力與責任的政策。

#### 安全督導員全職化

目前法例只規定,凡僱用20名工人的地盤,要聘請一名安全督導員, 但卻不需要全職聘用。本人認為政府要將安全督導員全職化,使督導員不能 兼任其他地盤工作,並能夠一心一意為一個地盤工作,執行安全工作。

我希望政府將勞工處現在推廣的安全卡(綠卡)制度大力推廣至私人工程方面。目前,工務科津貼港府工程的承建商,鼓勵承建商派工人參加職業安全訓練;計劃推行以來,共有15 000名工人受訓,只佔建造業人數兩成。

我認為政府不單止應在政府工程上推廣綠卡制度,同時應考慮將之推 廣至私人工程方面。

主席先生,上述大部分建議基本上不在政府的《安全約章》和上星期的所謂高峰會,跨部門小組的12項改善項目之內,我希望王永平先生能夠代表政府部門作出適當的回應。

主席先生,本人謹此陳辭,動議議案。

Question on the motion proposed.

**PRESIDENT**: Miss CHAN Yuen-han has given notice to move an amendment to this motion. Her amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Miss CHAN Yuen-han to speak and to move her amendment. After I have proposed the question on Miss CHAN's amendment, Members may express their views on the motion and the amendment.

MISS CHAN YUEN-HAN's amendment to MR TSANG KIN-SHING's motion:

"刪除"嚴重工業意外"之後的所有文字,並以下列取代:

"這種情況明顯是由於港府在防止工業意外方面,沒有一套有系統和 全面的監管政策,亦沒有一個法定機構統籌一切職業安全健康事宜; 因此促請港府從長遠來說應成立一個有實權的法定機構,及在現階段 採取以下措施,以改善目前情況:

- (a) 把目前就工業安全事官召開的跨部門會議改為定期性會議;
- (b) 抽調職業安全局及勞工處人手巡查全港的工作場所;
- (c) 盡快落實《香港工業安全檢討諮詢文件》的所有建議,包括盡快 完成一切有關修訂工業安全草案的工作;

- (d) 大幅增加對違反有關工業安全條例的罰則;及
- (e) 引入承建商扣分及停牌制度,和規定承建商定期提交安全紀錄,

及對工業意外傷亡者家屬提供各種所需協助"。"

**陳婉嫻議員致辭**:主席先生,我動議修正曾健成議員的議案,修正案內容一如議事程序表內我名下所載者。

主席先生,今天我的修正案的內容會分為幾部分,我的同事陳榮燦議員會談談有關工業安全條例的罰則。陳鑑林議員會談及對承建商執行扣分制度。葉國謙議員會談及"工業安全"檢討的建議。我則會集中談及面對現在香港的經濟發展,我們在工業安全整體上又做了多少工作呢?我準備集中於這方面。

主席先生,過去幾個星期,每晚回家,以為可以扭開電視鬆施一下自己,但在看新聞報道時,卻換來一幕又一幕血淋淋的情景,使人看得觸目驚心。我們看到的這一幕幕的血的教訓,可以說是由政府一手造成的。

主席先生,我因為在過去數星期以來,看到本地接二連三發生有人因工業意外傷亡事件而有上述感觸。我們想問一句,究竟在二十世紀九十年代這個現代化的香港,為何仍存在這種幾近不文明的事情發生呢?本人與工聯會及民建聯的同事都認為政府在過去幾十年來,在防止工業意外方面所做的工作十分不積極,始終追不上經濟及技術發展。港府一直沒有一套有系統、安全、及全面的監管工作場所機制,亦沒有由一個高層次、有決策權的中央法定機構去統籌一切職業安全健康事宜,及處理各類型工業意外及安全監察,而是由各部門各自為政,以"支離破碎"形式處理有關事宜。

主席先生,如果要我形容,我會說現在政府各部門各自為政,各有自己的獨立王國,互相爭奪資源。按照目前情況,陸上工業安全由勞工處負責,海上安全則由海事處負責,房屋委員會則負責其範圍內之地盤工業安全,機管局則負責新機場地盤內之工業安全等。在這種情況下,各部門有各部門的做法,協調不足,很容易出現"灰色地帶"。在各種情況下,我們均看不到政府有一套辦法來解決問題。所以,我發覺過去不斷發生的工業意外實在是重複出現,過去我曾在此批評政府在這方面沒有統一的機制。

主席先生,本人認為政府要有一個職業安全健康中央決策機構。長遠來說,我們希望政府應設立這樣的機構。去年三月,英國工業安全顧問李能瀚先生就本地工業安全進行的調查報告認為,本港長遠的工業安全發展策略,應是成立中央機制,並將之發揚光大。但政府當時面對這問題時,沒有正面考慮及接受報告的建議。前天教育統籌司王永平司憲前天在立法局人力事務委員會上表示會考慮有關建議,我當時聽到有點兒高興;但我隨即勸自己,不要高興得那麼快,這可能是政府在目前整個社會關注之下,敷衍我罷了。所以我很希望政府真的考慮一下現時情況。

主席先生,本人也認為,長遠來說,政府成立的上述中央機構,不應只統籌一切"工業安全"事宜。我記得過去幾年來,立法局內有不同的同事提及香港的整套工業安全問題,當時的同事認為應不單止限於工業,而應該考慮統籌整個就業問題,我們認為需要這種統籌機制,來統籌一切"職業安全健康事宜"。因為,香港經濟已由第二產業型態轉型為第三產業(服務業)型態,需要政府急不及待地解決問題。

主席先生,隨着本港經濟轉型,香港人的生活、職業等型態也跟着提升。我們希望港府不要再以"資源有限"為藉口。我很記得,有一次,當時的譚耀忠議員提及有關工業安全的三個方面,當時,梁文建司憲表示很同意,不過,政府不打算這樣做。我希望今次情況不會這樣,我們要求政府注重職業安全及健康發展。

以亞洲四小龍中的新加坡為例,她的三層職業安全政策模式值得香港人效法。這三個層次分得很清楚:第一,加強工業安全;第二,加強職業安全;第三,改善識業安全及職業健康。主席先生,面對這建議,我覺得政府今天應要考慮,並希望好像前天司憲所說的一樣,政府能籌組這件事。在我們未能這樣做之前,我希望在過渡期間,政府能將現在已經在舉行中的一些跨部門會議制度化起來。我認為面對着現在的天氣,面對着現在支離破碎的局面,面對着現在各方面存在的問題,政府都有責任。在未實施中央統籌之前,應將現有的四個署、兩個政策科和兩個司憲組成一個常設組織。

主席先生,面對現在的工業意外情況,有些人提出批評。當傳媒關注傷亡人士時,我們覺得政府會很緊張,當沒有人關注時,政府就會愛理不理。我希望政府就給予工業意外傷亡人士的家屬的待遇訂出一個標準,不論傳媒關注還是不關注,政府都應該有一個制度,以解決目前存在的問題。主席先生,本人謹此陳辭,修正曾健成議員的議案,謝謝。

# Question on the amendment proposed.

**梁智鴻議員致辭**:近月來,香港發生了多宗不同類型,但同樣令人震驚的嚴重工業意外,令十多個家庭突然痛失經濟支柱,確實令人心酸。因此,曾健成議員今天提出的議案,可說非常切合時宜。

其實,近幾年政府亦有對改善工業安全與職業健康進行檢討。不過,我們依然時常看到很多嚴重工業傷亡事件發生。每次嚴重事故發生後,有關官員甚至總督總會信誓旦旦地表示會加強監管,不過,這些重複的承諾似乎已變成當局的"例牌"回應。

接二連三地發生工業意外,與當局監管及巡查不足,刑罰過輕及僱主、僱員對工業安全及職業健康的認識和警覺性不足,都有莫大關連。換言之,要真正推動和保障工人的安全與健康,政府、僱主、僱員三方面都有責任。

因此,我對陳婉嫻議員提出的修正案的字眼甚有保留。她的修正案,明顯地將防止意外的責任放在政府及承建商身上,政府固然有無可推卸的責任,但僱主及僱員的責任又如何?他們是否沒有責任呢?另外,修正案說要促請港府"抽調職業安全局及勞工處人手巡查全港的工作場所",但卻沒有促請當局增加資源及人手,這無疑要職安局以現有資源,多扮演一個額外角色,這會否對其宣傳及教育工作構成影響?

#### 職業健康受忽視

一些駭人聽聞、涉及人命的工業意外,理所當然受到大家關注。不過,相對而言,全港二百八十多萬 "打工仔"每天面對工作上的安全與健康問題,便較少受到社會、政府、甚至僱主及僱員本身的關注。但這並不表示問題不嚴重或不存在。去年,全港便有近59 400宗職業傷亡事件,涉及247人死亡。這些數字中,佔了三成是發生在非工業經營的僱員身上。假如我們把那些要經年累月才浮現的職業病,例如肺塵埃沉着病,或因工作而失聰的病都計算在內,香港工人"為兩餐"而要付出的健康和性命代價委實太大。

政府的確似乎就有關問題,進行了不少檢討,提出了不少建議,然而, 落實進度緩慢,而且缺少足夠資源及人手以配合,令人懷疑政府是否抱着 "少人關注、少傳媒報道的問題便可放慢手腳"這種心態。

例如,在一九九二年,政府的職業健康專家小組提出了39項建議,有關官員最近向立法局衞生事務委員會匯報,表示只有11項尚未完成。驟耳聽來,成績似乎不錯,但仔細研究,便會發現未落實的均屬較重要建議,而一些關乎修改法例的,則居然仍在諮詢階段,實在教人失望。究竟我們政府的工作效率是否有問題?還是欠缺推動決心呢?

例如,一九九二年的報告建議重組職業健康科;同時立例規定為僱員 (尤其是危險行業僱員)提供入職前及定期在職身體檢查,並訂明須由曾受 職業醫學專科訓練的醫生進行。報告更認為當局應積極協助提供這類培訓, 以確保香港有足夠專科人手照顧工人健康。

不過,四年後的今天,我們依然未見有關法例訂立,職業健康科依然未改組,而且依然只有少於十名醫生;而衞生署直至最近才舉辦首個有關職業醫學的培訓課程。

另外,立法保障非工業經營僱員健康的建議,研究多時,至今依舊只在 諮詢階段。衞生署開設的工人健康診所依然只得一間,未見有任何擴展服務 跡象。試問一間診所那可以照顧全港280萬勞動人口呢?

當然,我們必須採取行動,防止嚴重工業意外發生;但我們更要結合政府、僱主、僱員三方面的力量,以行動預防威脅工人安全及健康的各種大小 危險。

我們必須謹記,喪失生命和健康,是任何金錢的賠償及康復的服務都無 法彌補的!

主席先生,謹此陳辭,支持原議案。

**劉千石議員致辭**:主席先生,要全面改善工業安全,所有參與其中的單位及個人都必須負上責任。剛才,已經有不少同事就政府及承建商的責任提出意見,相信稍後亦會有同事發言,而我則希望談談一向較少人關注的發展商責任。

我們說,地盤安全總承建商要負主要責任,因為總承建商要全權負責整個工程,而且其他次承建商都是由總承建商聘用的;不過,大家不可不知,建築地盤的真正"老闆"其實是發展商,而地盤完工後"賺最多"的亦是發

展商。可惜,在現行工業安全制度下,發展商對於地盤安全卻幾乎完全不用負責。其實,地盤工程的規劃及設計往往對工作安全構成重要影響,發展商對工程進度快慢的要求亦會影響承建商重視工業安全的程度。故此,如果發展商方面亦能重視工程的工業安全,我相信工業安全將會得到大幅改善。

政府及其他公營機構,例如房委會等,作為本港的大發展商,本身亦有 對他們負責的工程安全進行監督,而且工務部門更準備推行計分制。如果承 建商的安全紀錄差,將不能獲得政府工程合約。問題是,私人發展商卻完全 沒有這方面的監管措施,發展商只是關注工程質素及工程進度夠不夠快,不 理會工人的生命安全,這實在是全港工業安全制度的一個非常大的漏洞。

主席先生,我亦希望借這個機會替工友講幾句說話。

機鐵工程工作台下墮慘劇發生後,我當晚到過醫院探望工傷死者家屬;當時有一個死者家屬十分悲痛而且表現得特別激動,我上前安慰她說,我們一定會盡全力"幫你們手",不過,那家屬卻沉痛地說:"你幫我,你幫我?那你就叫我的丈夫醒過來跟我說話吧!你做不到吧!"主席先生,當時我感到非常、非常難過,我當然無法令重傷致死的工友復活。事後,我問那些死者家屬對政府有甚麼要求,她們均毫不猶疑地答:"希望改善工業安全,以保障工人的生命安全。"

工作安全是工人可以再工作、再賺錢養家的根本基礎,而每次當我看到工傷死者的妻子、兒女沉痛無奈的眼神,我都想像到,但求他們的丈夫、父親可以平平安安回來,他們願意以任何東西來交換。家屬對他們丈夫、父親的要求其實很簡單,就是"快快樂樂上班去,平平安安回家來!"我相信,每一個做丈夫、做父親的都應該回應這樣的要求,盡我們的本份做好工業安全,不要忽視、不要大意、不要輕視、不要遺忘、不要"搵命來搏";要做一個不致令家人傷痛的丈夫與父親,則我們必須加強工業安全這方面的意識和警覺。

主席先生,本人謹此陳辭。

#### THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

田北俊議員致辭:代理主席先生,在工業安全方面,最近期的問題都是有關建築業的。當然,現在我們亦把建築業分為兩類,一類是香港本地的建築,

即所謂"起樓",而另一類是關於基建設施的,即建築橋和公路等。這方面可能因為很多合約涉及跨國公司,其中有些更涉及高科技,使我有些擔心。香港的僱主或判頭和工人,在這方面的知識都不太足夠,所以,就這方面的工程,政府除聘請顧問公司監察這些巨型項目外,亦可考慮聘請一些跨國顧問公司在工業安全方面提供意見。

事實上,這些高科技的建築,是香港很多判頭或建築商沒有經驗去執行的。有關今次20噸石屎從橋上掉下來的事件,那些法國公司應該有能力提供多些意見。此外,關於今天的兩項議案和修正案所提及的加強執法和懲罰方面,我有一些意見。事實上,罰款是否真的可以解決問題呢?現時最高刑罰已經是20萬元,監禁一年。政府亦說,到目前為止,未曾判罰過監禁,大部分只是罰款萬多元。如果真的將刑罰加重,事實上,承建商看到大家只關注金錢方面時,他們可以購買保險,即使將刑罰提高至50萬或100萬元,他們都可以購買保險,同樣不會正視安全問題。有一個建議是關於扣分停牌制的,我覺得可以加以考慮。

在扣分方面,可以環繞工業安全。如經常表現差勁的,便可以扣分,在 賞罰方面,可以從"賞"這方面着手,如果他們在一年內沒有意外,是否可 以多加一些分數呢?這樣便可以分辨出一些較好的承建商。至於較差的承建 商,則可以鼓勵他們在工業安全方面做得好些。

當然,一個好的承建商,可以讓他承投政府工程,否則,可以不讓其承投,但這個可能是個一刀切的辦法,或許可以另外想出一個更好的方法去評估這情形。

代理主席先生,在兩項議案中,我們較支持曾健成議員的建議。我們支持a、b、c各項,我在此不詳細複述了。但陳婉嫻議員提出要設立一個法定機構,統籌一切職業安全健康事宜,並使之成為一個有實權的法定機構。在這方面,我有點兒擔心。事實上,我們要關注的事情實際上有很多,例如:斜坡情形。如果是這樣的話,莫非又要為此成立一個法定機構?

政府的資源是有限的,我們當然很注重工業安全,但是否有需要成立一個法定機構來關注一樣事情呢?這樣做,能否解決問題呢?我們覺得現在最重要的工作是鼓勵僱主。我承認在三方之中,僱主的責任佔第一位,政府佔第二位,工人才佔第三位。怎樣鼓勵僱主多想想工業安全的問題,其實跟其他問題如品質、時間表一樣重要。我也有一個建議,就是現在在建屋方面,已經有ISO9000的品質管理,是否也可以有關於工業安全的ISO9000計分制?這樣可以鼓勵僱主更正視工業安全問題。

代理主席先生,自由黨支持曾健成議員的原議案,至於陳婉嫻議員的修正案,因為我們在法定機構這方面有所保留,所以我們會投棄權票。多謝代理主席先生。

陳鑑林議員致辭:代理主席先生,今年六月份,可以說是香港職業安全史上的"黑色六月",在短短兩、三星期之間,接近20人因工業意外而傷亡,竟然有勞工處官員認為是天氣太熱所致;我不清楚今年六月是否特別炎熱,但相信沒有那一年的夏天像今年般有那麼多工業意外造成人命傷亡。

眾所周知,香港的工業安全問題不外乎是:政府監管巡查不足、刑罰過輕,以及僱主和工人的安全意識低落。港府在面對公眾人士、議員和工會的壓力下,舉行了一次應酬性質的跨部門高層會議,但會議的結果,不但沒有對症下藥,反而提出了12項大多是為了"湊數"的措施,我們說是"新瓶舊酒",已經算"俾面",說是"舊瓶舊酒"可能更貼切,其中有些所謂新措施,甚至令人啼笑皆非。

例如:港府建議勞工處增調十名工廠督察作突擊巡查,但相對於全港四千多個工作場所,這十人又可發揮多大作用?既然港府有心採取突擊行動,為何不能夠雷厲風行,抽調更多人手,甚至由勞工處的高層職員親自出馬,以真正收到阻嚇作用。至於所謂設立24小時投訴熱綫,就更嚇壞人。據我所知,這個熱綫電話,即使沒有十年,也有八年歷史;其他措施,部分是既有政策,部分則是去年七月的工業安全諮詢文件的建議。

其次,港府官員多次強調,發生工業意外是由於工人不重視安全問題、僱主或地盤承建商妄顧工人安全,於是承建商有責任、僱主有責任、工人有責任,惟獨是"工業安全,政府無責"!

民建聯認為,針對目前情況,港府應盡快落實《香港工業安全檢討諮詢 文件》的各項建議;此外,正如我在今年一月份立法局議案辯論時亦提到, 有關諮詢文件過分著重自我規管,而忽略政府的責任。我們認為,要有效解 決工業安全問題,必須自我規管與立法工作雙管齊下,並且切實考慮以下的 建議,以提高工業安全的水平:

1. 引入停牌制度或扣分制,規定承建商定期提交安全記錄,包括工業 意外數字及被成功檢控數字。如果承建商在某一特定期間內遭成功 檢控一定次數或被扣若干分數,便會被停牌或禁止競投工程,遇有 特別嚴重的情況,承建商更可被罰永久停牌;

- 2. 將現時由承建商聘請安全主任的做法,改為由勞工處指派,安全主任並不屬於承建商僱員,承建商無權將其解僱;
- 3. 引入安全主任資歷再核實制度,使安全主任的經驗及資歷在一段時間後得到重新核實,作為有關人士可否繼續出現在註冊安全主任名冊上的標準。

代理主席先生,本人謹此陳辭。

**MR RONALD ARCULLI**: Mr Deputy, before I offer my comments on the motion and the amendment, on behalf of my constituents, I would like to extend our deepest sympathy to the families who have lost their loved ones. We would also wish those injured a speedy recovery.

We support the call for assistance to these families, but we would have thought that it would be wholly unnecessary for this Council to discuss and debate this point as we are sure that the assistance would be available within our system of public assistance.

Mr Deputy, no one in their right mind wants accidents, let alone those that cause injury or death. The movers of the motion and the amendment are well-known supporters for the cause of workers, and I suspect I am an equally well-known advocate for the cause of my constituents. But that does not mean that we cannot put our heads together to see whether we can arrive at a consensus on new ideas, new initiatives and speedy action. But I can say one thing: constantly demanding heavier penalties will not achieve the objective of making the workplace safer. I will therefore use today's debate to ask them for help.

Mr Deputy, the construction industry has continuously advocated for more training in safety. Indeed, Honourable Members may recall that the Hong Kong Construction Association(HKCA) had a year-long campaign last year called "Construction Site Safety is the Duty of All — Training for Results". This campaign resulted in the HKCA introducing the Green Card Training System. The Occupational Health and Safety Council, the Construction Industry Training Authority and the HKCA devised a safety induction course for construction workers. The HKCA also devised a course for trainers who would, on

completion, be able to train workers on the safety induction course that I have referred to earlier. Mr Deputy, I am happy to report that the HKCA has trained some 300 trainers and, since the beginning of this year, has issued over 10 000 green cards to workers who have passed the test after completing the safety induction course.

Mr Deputy, I am also happy to report that the Works Branch endorsed the Green Card system at the end of 1995 by making it a contract condition that workers on Works Branch projects are required to hold a Green Card. The Housing Authority also endorsed the Green Card system at the beginning of 1996, but this is only a beginning as it is undertaken by contractors and workers voluntarily. I believe we need much more. And therefore I welcome the Honourable TSANG Kin-shing's endorsement of the Green Card system.

Mr Deputy, yesterday because of our concern for safety, office-bearers of the HKCA including its president, Mr Peter LAM, and I met with the Secretary for Education and Manpower. We put a number of points to him including one which I would particularly like to highlight. After all, safety at work is the responsibility of all, and by this I mean, in the case of the construction industry, the developer, the contractor, all the professionals and all the workers on the one hand, and the Government on the other.

Mr Deputy, my views on the role of those involved in the industry is well known, but for the record, my constituents are constantly trying to improve safety. In fact we pursued yet again with the Secretary for Education and Manpower the HKCA's proposal for a compulsory safety induction course for all workers, trade testing as well as registration of workers. The rationale is simple and clear: compulsory safety induction training will better equip the workers to look after themselves as well as their fellow workers. We need to instil a safety culture into workers and contractors alike. This will go a long way to reducing industrial accidents.

Mr Deputy, the cost for introducing a system of registration of workers or the safety induction training course is not high compared to the cost in emotional and financial terms to the families involved. Indeed, I am sure the property sector will be prepared to play its part and take on this responsibility, including the financial responsibility, if the Administration and the workers are prepared to endorse the scheme. A lot of work will have to be done as quickly as possible to test its feasibility and acceptability, and I call on union leaders, some of whom are Members of this Council, to react to this positively. From the remarks of the Honourable LAU Chin-shek, I shall assume that he will react positively to the HKCA proposal which I have just outlined.

Mr Deputy, I am as concerned as any Member in this Council about safety. However, I believe the motion and the amendment do not have the right or indeed a fair balance from my constituents, point of view, and I will therefore abstain on both.

**張文光議員致辭**:代理主席先生,九六年六月,對於在建築地盤工作的工人來說,是黑色的六月。在不足一個月之內,奪去了15名工人的寶貴生命,為香港的工業安全史添上了黑色的一頁。

意外發生後,輿論嘩然,政府發出12項緊急措施,很多人說都只是"新瓶舊酒",其實是"新瓶舊水",根本沒有對症下藥。掃蕩式緊急巡查,類似大陸的"嚴打",只能起一時之效;教育和研討需要潛移默化,遠水不能救近火。只有檢控和重判,才能針對漠視安全的承建商;可惜政府依然放軟手腳,懦弱無能。

初步調查發現,最近幾宗工業意外均涉及人為因素,而僱主的疏忽至為關鍵。葵涌機鐵大樓工作台倒塌,工作台上午才裝好,承建商未經檢驗和批准,下午便指派工人開工,成為變相殺手。

油塘船塢四名外地工人慘死,他們在沒有受過工業安全訓練、沒有安全 專業人員駐守監督、沒有安全游繩、沒有呼吸器具的情形下,進入危險的密 封艙底,結果賠上了自己的性命,也是僱主安排上的疏忽。

駭人的工業意外中,涉及的僱主,不是小規模的山寨老闆,而是經驗豐富的承建商。那些財力雄厚的跨國公司,竟然在連續數個月內,有多次的工業意外被檢控紀錄,可謂劣績昭彰。他們為了趕工程賺大錢,不顧工人死活,亦不願提高成本,最終犧牲了工人的性命。

可能在部分僱主的商業眼裏,工業安全和賺錢往住是互相矛盾的。因

此,只有具阻嚇性的檢控和罰則,只有威脅到承建商的經濟利益時,才能迫使承建商認真負起安全的責任。可是現時的罰則,軟弱無能,毫無阻嚇性。

第一,法例的罰款上限只是20萬元,只及出版色情書刊的40萬元罰款上限的一半,難道兩宗致命意外才抵得上出版一本色情書刊?《不雅物品條例》對再犯者罰款倍增至80萬元,《工業安全條例》則漠視承建商的累積劣行。對於動輒以億元計算的工程,區區20萬元只是九牛一毛,何況去年罰款平均每宗不過12,000元,承建商根本不會放在眼內。

第二,雖然法例訂明有監禁的罰則,但對於以公司名義註冊的承建商卻毫不中用,例如九三年北角籠粒意外導致12名工人喪生,法庭判處有關公司誤殺罪名成立,結果只能判罰300萬元,公司董事則逍遙法外,另組新公司繼續承接工程。

第三,根據規定,承建商若在六個月內,被法庭六次判罰違反工業安全,工務司有權停止其投標政府工程,有效期三個月至半年不等,但是在這段時間內,該承建商可以繼續施工,亦可以在私人工程投標。這種所謂懲罰,實在兒戲,令人感到人命賤如糞土。

代理主席先生,一項私人工程,監管安全的計有勞工處、屋宇署、機電工程處、消防處,甚或海事處;而政府工程,涉及的部門不下十個,新機場工程統籌署、建築署、土木工程處、機電工程處、渠務署、拓展署、水務署、地政總署、路政署、房屋署、漁農處等,他們各自判出工程,各自有一套安全程序。"三個和尚無水食",更何況現在是11個部門,11個和尚?

部門職權分散,互不統屬,官僚割裂,遇事時互相推搪。工業意外的發生絕不會遷就部門分工,欠缺全面統籌和協調的架構,造成法例漏洞,執法割裂,為不顧安全的承建商製造法律罅,為危險操作製造"無皇管"的死亡地帶。無論是教統科,抑或新成立法定組織。其實我們需要有權、有錢、有效率、有承擔的架構,統籌工業安全和職業健康的執法事宜。

八五年至九四年的十年之間,工業致命意外的每年平均數是78宗,九五年則有77宗,可見工業安全問題十年內都沒有任何改善;建造業一直是重災區,今年上半年已經有31人死於地盤意外;政府的紀錄亦非常差,九五年政府工程的意外死亡有23宗,佔全港死亡數字三成,其中一半是在新機場核心工程中發生的。政府其身不正,何以正人。

工業安全問題絕不只是這個六月的事,立法局、勞工界和社會輿論一直

而持續強烈批評,政府究竟做了甚麼?每一次有新法例出現,其實必定是因為之前有嚴重死人意外發生,主席先生,在一個嚴峻的問題上,究竟還要死多少人,我們才能從而的教訓中醒覺呢?

代理主席先生,本人謹此陳辭,支持議案。

李啟明議員致辭:代理主席先生,六月份連續發生多宗致命的工業意外,導致多個家庭家破人亡,一幕幕人間悲劇令人慘不忍睹,這類工業意外使本年度工業意外死亡人數上升至三十多人。為此,工業安全再度引起社會公眾的關注,人們在悲痛及震驚之餘,不禁質疑,為何香港推行工業安全經已多年,卻未見奏效呢?原因何在?政府是否難辭其咎呢?

相信大家都不會忘記,在去年十月的施政報告中,政府承認"香港工作場地的安全紀錄,特別是建造業方面,仍然未如理想,我們決意改善這個情況。"同時又承諾"九六年發表一份工作場地安全約章,訂明工人享有在安全環境下工作的權利,以及僱主有責任盡量減低屬下僱員發生工作意外的機會。強調工人有責任遵從安全指示,並須與有關當局合作舉報任何違反法例規定的情況。此外,政府會鼓勵僱主和僱員合力承擔管理工作場地安全事務的責任,以及制訂安全政策和措施,監察其執行;並會透過教育、訓練,以及讓人們了解意外的成因,增強安全意識。"美好的計劃能否實施呢?評估一個事件,關鍵是看其結果。遺憾的是,政府就《香港工業安全檢討》雖然公布了45項具體建議,但實際上只是公文旅行,紙上談兵。目前,本港已列入世界發達經濟地區的行列,擁有號稱高效率的公務員隊伍,卻同時有一個極惡劣的工業安全紀錄。這些難道不值得有關部門認真反省、檢討嗎?面對一幕幕悲慘景象,有關人士能不感到汗顏嗎?

代理主席先生,近期多宗工業意外顯示,工業安全已逐步失控,究其原因是政府在研究推行安全管理制度的同時,卻未有加強執法及巡查加以配合,政府對這些工業意外是難辭其咎的。俗話說:"亡羊補牢,為時未晚也。"政府應勇於承擔在立法、執法、教育方面的責任,明確劃分職責,賞罰分明,切勿互相推諉。本人認為政府、僱主、僱員應立即行動,總結事故的教訓,找出意外的原因,採取相應的預防措施,方能避免意外再次發生。當務之急是擴大宣傳教育,加強監管及完善工業安全審核制度,而不是糾纏於追究誰之過。

代理主席先生,政府應盡速制定嚴厲的罰則,組織特別巡查隊突擊巡查及監管施工。監察危險情況,制定有效措施以控制工作上的潛在危險和採取補救行動。目前,香港註冊安全主任約一千一百多名,而半數以上現時並非從事安全主任的工作,有關部門應盡快推行安全管理制度,增撥資源,支援安全主任的工作,協助安全主任能夠履行其職責。對違反工業安全法例的僱主,司法機關應施加重罰,以收阻嚇作用。由於工作安全性命攸關,所以僱主必須清楚,工作安全比工作效率更為重要,當員工在安全的環境下工作,意外便會減少,工作效率自會提高。工業安全的實施不可單靠自我規管,並須完善法例,加強執法並積極推廣安全意識,使僱主認識有責任向工人提供工業安全保障,也有對工人的安全作業進行監管的責任。假如管方以預防為主,做好嚴格的安全措施,相信大多數工業意外是可以避免的。

代理主席先生,從表面上看,許多意外事故的肇因看來都是由於工人本身的疏忽,安全意識薄弱,沒有嚴格按照安全守則作業。然而,實際上工人是意外事故的直接受害者,如果他們事先有足夠的安全知識,在作業時也有足夠的安全措施保障,試想誰又會拿自己的生命去冒險呢?只有加強宣傳教育,使工人具備完善的安全意識,僱主欲馬虎了事都過不了關。工業安全無捷徑可走,只有當工人與僱主都認真遵守工業安全守則,對本港工業意外的減少,方有實質性的幫助。期望政府,僱主、僱員三方協調一致,重視工業安全,共同創造安全的工作環境。

此外,政府有關部門應對本港工業意外的死難者家屬,提供及時的支援,助其解決精神上和經濟上的困境。

代理主席先生,本人謹此陳辭,支持陳婉嫻和曾健成議員的議案,謝謝 代理主席先生。

**蔡根培議員致辭**:代理主席先生,近20年本港工業迅速發展,香港已成為現代化的工業城市。可是,本港的工業安全紀錄,確實令我們感到慘不忍睹,尤其在建造業方面,其工業安全紀錄,仍是經濟較富裕地區之中紀錄最差者之一,目前其工業傷亡率比十年前還高。

為甚麼會有這種情況呢?就是因為政府對工業安全差不多採取放任的態度。政府監管不力,政策短視,頭痛醫頭。政府近日的做法,恰好地說明了這種情況。本月接二連三發生多宗重大傷亡事故,一個月內竟導至十多名工人不幸喪生,政府才急就章地召開跨部門小組討論。兩小時的會議,制訂了

12點加強工業安全措施。細看此12點措施,可謂了無新意,其中大部分已經實施或將會進行。這次會議,只是做"秀"(show),攪攪宣傳,應酬應酬社會壓力而已。

本港工業安全的核心問題,港進聯認為有下列幾點:

# 一、法例懲罰不嚴,司法判刑過輕:

根據現行法例,違反規定最高判罰款20萬元及入獄一年。去年平均罰款為17,000元。對承判商或僱主而言,這個罰款金額可謂"濕濕碎",並可計入經營成本中。

#### 二、政府監管不力:

政府基本上把工業安全審核責任推在僱主或承判商身上,有關執法及監 管部門的監管,差不多陷入失控情況。

由於安全審核工作,基本上由僱主或承判商內部進行,這方面工作是否不受僱主干涉而審核認真持平,很有問題。

此外,近年來不少發生意外傷亡的承判商,曾有多次不良紀錄,但由於目前本港並沒有對承判商採取扣分停牌制度,他們可以混水摸魚,輕率"過骨"。

#### 三、缺乏完善的安全管理制度:

基於安全事務從業員人手不足,及僱主和承判商有關利益團體反對,目前有關法例只針對大規模的工場,但不少小規模的工場或地盤,其安全情況更有問題。而僱主往往缺乏完備的安全審核報告及安全檢討,更令事故容易發生。

## 四、缺乏足夠數量的安全從業員:

政府過往忽視這方面的人才培訓,尤甚者,本港目前的安全主任過半數 並非從事安全事務工作,這是由於工作環境及待遇問題所引致的。

#### 五、工人缺乏工業安全意識:

由於本港政府及僱主宣傳不夠、監管不嚴、巡查不足,本港工人安全意 識薄弱。

代理主席先生,發生了工業意外,港進聯認為善後工作固然重要,但最重要的還是如何防止意外發生。在工業意外接二連三發生之後,採取一些緊急行動,當然聊勝於無,但長遠治本的方法是促請政府盡快建立一個妥善的安全審核制度。

代理主席先生,本人謹此陳辭。

**陳榮燦議員致辭**:代理主席先生,現在本人發言支持陳婉嫻議員的修正案。

近日接二連三發生多宗嚴重的工業意外,造成十多名工友死亡,情況令 人痛心,社會上亦帶出一連串的討論,包括今天的議案辯論。死者已矣,香 港還有數以十萬計的工人每日從事不同職業的工作,相信我們討論的目的應 是為長遠保障這班打工仔的職業安全健康而進行,這才顯得有意義。

#### 大幅增加對違反有關工業安全條例之罰則

修正案中指出,港府應大幅增加對違反有關工業安全條例的罰則,本人深表贊同。現行的《工廠及工業經營條例》主體法例第6A條,對違反規定的東主可判罰款港幣20萬元,至於無合理辯解而違反安全者,則可罰款港幣20萬元及監禁六個月。但是,各項工程往往數以幾億甚至10億元計,即使判處最高罰款20萬元,亦只是九牛一毛而已,正所謂:"濕濕碎",無關痛癢,不值一提。

工聯會認為,為切實收到阻嚇作用,政府應將上述最高刑罰分別改為港幣100萬元,以及港幣100萬元和監禁五年。現時工業意外頻生的一個重要癥結就是罰則太輕,承建商往往只着眼於工程的推展效益和趕工完成,把安全問題放在十分次要的位置。社會上亦普遍存在僥倖的心理,無論是政府、僱主,甚至工人本身都抱著這種僥倖心理,得過且過,直至發生嚴重工業意外,血的教訓,死得人多才醒覺代價的巨大。

增加對違反有關工業安全條例的罰則,可相應反映出工業安全的重要性,亦可直接提高承建商的安全意識,從而在投入資源時,在設計上、施工程序上等各方面加入對安全意識和設施的考慮。

此外,現時對工業意外的罰則、罰款一般較輕,對違例僱主罰款只為數千或數萬元。如果提高罰則,可使法庭審訊時靈活處理,遇有嚴重事故時, 也可以判處相對較高的罰則。

除修訂主體法例外,在目前《工廠及工業經營條例》下二十多條有關行業的附屬法例,政府也應全面檢討其罰則。例如建築地盤安全規例中,最高罰則只為罰款港幣20萬元及監禁一年。此條文亦不符合現實情況,亦須修例大幅增加其罰則。

# 抽調職業安全局及勞工處人手巡查工作場所

代理主席先生,當然,我們大家都不想有意外發生,但應如何預防呢?這是一個極其重要的問題。本人認為,現時當務之急,政府應加強勞工處人手巡查全港的工作場所,工廠督察則要加強對違例僱主的檢控工作,以防範於未然,並且希望增撥資源給職業安全健康局,從而可以抽調職業安全健康局專業人員,配合勞工處人員加強巡查地盤和場所,亦要在職業安全健康局大力配合下,加強場所的工人職業安全健康宣傳教育,促進工業安全健康的工作,並在有關巡查人手的質素上作出改善,加強其人材培訓工作。

代理主席先生,過去一直有人批評負責巡查工作地方安全設施的工廠督 察的專業技能及知識不足,故本人及工聯會認為,在抽調人手之餘,也應加 強有關人材的特別專業的培訓。

當然,長遠來說,政府一定要成立一個有效率的中央法定機構,統籌一切職業安全健康事宜,才是治本又治根的方法。

代理主席先生,本人謹此陳辭,支持修正案。

謝謝代理主席先生。

鄭明訓議員致辭:代理主席先生,工業安全是勞資政府三方面都應注意和應該積極合作改善的議題之一。雖然勞資雙方在工資福利和輸入外勞政策等問題上都存有不同意見,但我相信大家在此範疇上都有良好意願去改善目前的情況,因為有人死傷始終是我們不想發生的悲劇。既然提高工業安全是大家有共識的項目,便應各盡其責,以減少悲劇發生。僱主應該提供足夠和適當

的安全設施給僱員,僱員亦應該遵守這些政策,才可達致目標。

現在法例規定,地盤請超過20人便要僱用一個安全督導員;請超過100 人則要僱用一名全職和已註冊的安全主任,向僱主提出安裝一些設備和措施,保障有關人士的安全和健康,以及巡視工場,找出有潛在危險的地方,加以防範。若僱主不照做,而導致意外發生,就會面對刑事和民事檢控。

不過,我想指出,僱主有責任之餘,僱員也有責任。現行法例往往多針對僱主,無形中忽略了僱員。當然,有一些僱主輕視工業安全,導致員工受傷。但是,我們也不要忘記一些有良心的僱主,為員工提供了很多安全措施,不過,員工沒有遵守,所以,引致工業意外。主席先生,我在此聲明並非建議控告遇到意外的員工,也並非落井下石,只是想討論一下,提出票控不遵守安全法例的員工,配合宣傳,以收阻嚇之用。

除了以上的構思外,我呼籲政府,勞資三方面大力推行工業安全教育,特別在工業中學,職業先修學校,建造業訓練局,職業訓練局和大專院校的工科課程內加入工業安全一節,提醒他們這個重要性和教導他們如何操作保障安全的工具。根據工業安全訓練中心的數字顯示,九五年全年只有16 463人接受一般的工業安全知識課程,15 000人出席與自己行業有關的專題工業安全講座,還未照顧到大部分在工作的僱員。因此,政府應多舉辦此類課題或講座,僱主多放鬆幾小時讓多些員工可以出席,僱員亦要為本身安全着想,多些參與這類活動。

代理主席先生,對於曾健成議員和陳婉嫻議員提出的建議,我大部分都 贊成,只是對陳婉嫻議員要求成立"法定機構統籌一切職業安全健康事宜" 有所保留,擔心另立機構有"架床疊屋"的效果,也可能跟現行機制有重複 和有多少衝突。為了表示商界或僱主的誠意,我會支持原議案和修正案。

#### THE PRESIDENT resumed the Chair.

**梁耀忠議員致辭**:主席先生,我們日常生活中充滿着危機與陷阱。人類在社會上不斷掙扎求存,目的就是為了趨吉避凶,能夠安全地生活,這應該是社會的共同責任及共同願望。可是,單是過去十年,香港僱員因工作死傷的人數可以說是數不勝數;其中死了的工人,留給家人的是無窮的傷痛,而受傷

的工人,則為自己平添一生的悲哀和悲痛。

生命原本無分貴賤,但對於因工致死的工友來說,卻有階級之分。記得在三年前著名樂隊Beyond的主音歌手黃家駒在日本因工而撞死,很多人都深感痛惜,樂迷更悲痛不絕,黃家駒出殯時萬人空巷,死後本地及世界各地的樂迷常到他的墳前致祭;可是,姓名不見經傳的工人掉進地下沉箱,或從高空跌死,除了親友為他們撒上紙錢,在意外現場上香拜祭之外,整個香港社會,還有多少個人痛惜他們的生命呢?

過去十年,有二千多個因工致死的亡魂,幾十萬名工傷僱員,這筆血債,究竟是誰應該負責?我們的社會是否已盡了最大努力,為香港勞工張開安全網,為他們的生命、身心作出了最佳保障呢?

沒有,我可肯定說,沒有。

第一,政府沒有盡力;第二,老闆沒有盡力;第三,主管級僱員也沒有盡力!

政府在一九七九年已承諾將工廠督察人數增加至250名,但結果在16年後,即去年才達到這個數目。最可笑的是政府在九零年擴闊《工廠暨工業經營條例》至飲食業,但只分配三個督察負責近萬個飲食場所!目前情況又如何?近個多星期,連續有多位工友因工業意外死亡後,香港政府才急忙從工廠督察科中抽調十人到多如恒河沙數的地盤巡查,有效嗎?足夠嗎?"頭痛醫頭,腳痛醫腳","見步行步",這種態度表示出政府一直以來無心盡力保障工人生命,這個事實是無法掩飾的。

對於不顧工業安全的老闆而言,我們與其埋怨政府縱容承建商,說政府檢控不嚴,罰款太輕,倒不如直接譴責老闆為節省經營成本,草菅人命。當然政府若能加重刑罰,無疑可產生阻嚇作用,但我認為,最終只有老闆真心重視僱員的生命,僱員的生命才可得到最大的保障。

某些工友,尤其是新移民或外勞,他們多數未受過安全訓練,如果管理階層能給予適當的輔導、嚴格的安全督導,對前綫工作人員而言,相信定有較大的保障。在另一方面,由於現時沒有法例監管工業安全設備,如果僱主採用品質有問題的產品,對工人便不能起保護作用。而職業安全健康促進局的測試已證明了部分在市面上出售的個人防護用品,如高空工作安全帶、防撞眼罩等。有很多未能符合安全標準。不幸的是,有些工人以為使用了安全設備,便萬無一失,在警覺性降低的情況下,更易發生意外。

在此針對政府的敷衍態度,工廠及工業經營老闆的無良,以及法例的保障不足,我謹提出建議如下:

- (一)全面修改《工廠暨工業經營條例》,改名為《職業安全健康條例》, 將其監察範圍擴大至全港各行業,並引入新規例管制機械或工作 程序,還要監管安全設備的生產質素。
- (二)將工廠督察科獨立於勞工處之外,並改名為職業安全健康署,專 責職業安全工作,同時交給一個由勞、資、官組成的半官方組織 一 職業安全健康管理局,負責監察其執行工作及制訂政策, 促使改革加速進行。
- (三)設立由勞資雙方組成的工場安全委員會,規定50人以上的工場必 須設立委員會,藉以釐定工場的安全政策及督導政策的執行。其 中工人代表由選舉產生,並由法例賦予在執行任務時有權巡查、 調查意外、在工人安全出現危機時勒令即時停工等。
- (四)對違法僱主加重刑罰,包括停牌及監禁。
- (五)立法規定發展商負上安全刑責,確保工程在委辦及設計階段已充 分注重安全。

本人謹此陳辭。

任善寧議員致辭:最近連續發生多宗工地意外死亡事件,令人難以置信。有官員推測工在炎熱天氣下,較易疏忽而引致意外,是否我們也可以推測因天氣炎熱,勞工處督察較為疏懶而走漏了存在危險性的地盤設施呢?一年前,政府已提出加強工業安全的措施,但實際採取的又有多少呢?成效又有多大呢?本年一月十日,黃秉槐議員曾於本局會議上提出"香港工業安全檢討"的議案,引起大家關注工業安全的急切性!而於九五年七月發表的工業安全諮詢文件中,列出了45項改善建議。迄今一年,超過一半項目仍未落實,何其緩慢呢?可見政府處理工業安全的問題嚴重失責。

日前政府在改善工業安全的跨部門會議中,提出了12項改善措施,其中 一項是"勞工處在未來數星期抽調人手加強巡查高風險的土地,勞工處的巡 視地盤和工廠的督察分屬不同的隊伍;巡視地盤的督察有98名,最近才從工 廠督察抽調十名出來,改為巡查地盤,另外69名督察只擔任支援工作,該十

名臨時抽調出來的工廠督察,他們的工作期效只是至七月底。在發生了多宗 地盤人命意外後,僅僅在一個半月時間內增加10%的巡查人力,這肯定是不 足夠的。

本年度,在財政預算案中,勞工處預算會增設72個職位,以實施改善工業安全檢討文件所提出的各項建議,以及加強機場核心計劃工程的工業安全巡查工作。當中負責工廠及地盤巡查的督察名額需要49名,而現時已聘請的只有三名,可見增加人手是極緩慢的。本人建議政府在未聘請足夠巡查督察前,一定要維持現時十名或更多的工廠督察借調巡視地盤;因為將工廠與地盤巡查的急切性作比較,巡查地盤是較為迫切的,而相對工廠的意外不像地盤那麼嚴重亦較少牽涉人命,且現時本港大部分工廠的主要工序已北移,每一間工廠只准維持少數工人,做非核心工序的工作,觸犯安全的可能性亦比較低,故巡查的督察人員也不需要那麼多了。所以在整體督察未有足夠人手時,應維持最少由十名工廠督察巡查地盤,直至人手充分才停止調配,減輕巡查地盤人手不足的情況。

而在12項措施中,亦提到設立投訴工業安全情況的熱線電話,本人非常 贊成,且認為應於每一地盤豎立幾個大告示牌,把熱線電話號碼張貼於當眼 的地方,讓工人可以遠遠看見。一來可以讓他們知道有此投訴熱線,以爭取 更多保障性命安全的舉報;二來可以方便他們在上班中休息時間致電投訴。

另外,本人亦建議增設多一條短號碼的電話熱綫,以供發生工業意外時專用,因為曾有市民投訴,九九九報案專線亦有接不通的情況出現。新設專綫由職業安全局管理最為恰當,因為一來可以使職業安全局由靜態的宣傳及訓練工作變成動態的協助處理事故工作,使其發揮更大效用。二來由職業安全局作為統籌,在緊急情況下,即時聯絡勞工處、警隊、消防局、醫護人員及有關部門,希望能在最短時間內迅速處理事件的發生,以使傷亡人數減至最低。

陳婉嫻議員提出抽調職業安全局人手去巡查全港的工作場所,恐怕職業安全局的職員沒有擔任戶外巡查工作的資歷,所以暫時不能提供人手。本人建議職業安全局馬上開辦訓練巡查人員的課程,然後成立工業安全輔助隊可假如勞工處的督察擔任"警察"的工作,則職業安全局的工業安全輔助隊可擔任"社工"工作,以補勞工處督察工作的不足。同時有助推行所謂公司內部安全管理的新策略。原則上本人贊成定期召開跨部門會議,商討工業安全事宜,同時賦予職安局更多權力,希望可以作出有時效性的改善工業安全事宜,同時賦予職安局更多權力,希望可以作出有時效性的改善工業安全措施,以減低傷亡數字。從曾建成議員原議案及陳婉嫻議員修正案來看,兩者差別是,一個側重短期急切措施及體恤死傷者家屬,另一個較為重視長期改

善計劃,兩者都極為重要。修正案將原議案三項建議措施刪去,是不必要的。所以,本人支持原議案。謝謝主席先生。

**羅致光議員致辭**:主席先生,我今天的討論,主要是集中於因工業安全的失誤而導致工業意外傷亡的援助問題。在進入討論之前,我必須聲明,我們並不希望工業意外發生,我們亦應盡一切可行及努力的方法,防止工業意外的發生。不過,在盡力防範之餘,我們亦不能排除任何人為的疏忽或非人力可預防的意外發生。或許,我可以引述一些數字,讓大家知道。九三年因為工業意外亡的人有287人,九四年有263人,九五年有247人,而受傷的數字十分驚人,59 128人,這是一九九五年的數字。故此,我們要考慮的是,一個完善、公平而迅速的工業意外傷亡援助制度,這是必需的。

近日工業意外傷亡事件中報道,反映了政府各部門在援助工作上的不協 調及亦有被指因為事件的公開程度不同,而有厚此薄彼之嫌。明顯的是,政 府應就有關援助工作進行全面的檢討,加強部門間的協調及制訂以受助者為 中心的援助策略,給予受助者迅速而足夠的援助。

在這裏,我希望提出一個援助方法的概念,希望立法局的同事、政府及社會大眾考慮及討論其可取及可行性。因僱主破產,僱員有一個賠償基金協助解決即時生活的問題。由於交通意外所引致的傷亡,亦有基金可協助需要援助的人。兩者的共通點,都是有需要的人士都要等一段較長的時間才能獲得一般的賠償,基金設立的援助便可以解決即時及基本的需要。

由於一般工傷補償都需時甚久,不少有需要人士要等待一至兩年才得到 他所需要的工傷補償。所以民主黨建議政府考慮撥出一筆款項,成立一個基 金。因工傷失去工作能力的本人或死者的家屬,均可得到基金的即時援助。 申領人如日後循其他途徑得到賠償,則可攤還予該基金。上述意見只屬一個 概念,細節還需討論和研究,今天,我在此提出,是希望立法局的同事及政 府能考慮這個基金的可行性。

本人謹此陳辭。

馮檢基議員致辭:主席先生,在過去的六月分內,工業意外頻仍;單在六月 六日至十三日這個星期之內,就有14名工人因為工業意外而喪生。其實接二 連三的工業意外發生,並非偶然的事;一直以來,香港工業意外數字是持續

高企。以建造業為例,在八六至九零年,一共有290個建造業工人因為意外而喪生,平均每年有58宗;到九一至九五年,則一共有296宗致命的個案,平均每年有59個人死於工業意外。這些數字告訴我們,香港在工業意外方面的情況並未有任何顯著的改善,這與本港的工業安全制度有關連。以下我想就巡查監管及違例刑罰二方面作出討論。

第一,巡查監管方面:根據勞工處的數字,現時負責巡查工廠及地盤的工廠督察編制共有258人,扣除受訓的員工外,實際參與巡查工作的督察有227人,而這批督察分為巡查地盤及巡查工廠兩類。現時全港有6 787個地盤,而巡查地盤的工廠督察則有136人,倘若要巡查所有地盤一次,則每人要負責50個地盤,每日到一個,亦要十星期才可以完成。至於工廠情況更令人擔心,全港現時有9萬間工廠,但巡查工廠的督察只有91人,換言之,每人平均起碼要負責1 000間工廠的工業安全問題。

從上述的數字可以清楚看到,當局巡查人手是嚴重不足的。倘若有法例 而欠人手去推行,那麼縱使有多麼完善的法例亦是無用的。我促請當局應增 撥資源,增聘人手,加強對地盤及工廠的監察。

第二方面,是有關違例刑罰的問題:除了巡查人手不足外,執法不嚴亦是問題根源之一。根據勞工處的數字顯示,對於違反《工業安全條例》的承建商,法庭的判刑都是非常輕微的。以去年為例,全年違例的平均罰款只是12,000元。這筆罰款,相對於數以億元計的工程合約來說,只是九牛一毛,對承建商是微不足道的。政府應該修訂法例,大幅提高對違例者的刑罰,以收阻嚇的作用。

主席先生,我亦想談談對工業意外死者家屬的援助問題。近日有報道指出社署在處理死者家屬險葬援助時,存在雙重的標準:對於備受傳媒關注的個案,社署會即時提供援助,絕不怠慢;至於較少人關注的個案,社署則遲不理,甚至要其家屬東奔西跑,才能獲得資料及有關的險葬費。根據有關團體的資料顯示,在醉酒灣高台下墜、新蒲崗拆樓工人墮樓這些事件中,死者家屬是在事發後一天已獲得社署的殮葬津貼,其他意外事件的死者家屬是在事發後天甚至幾星期後才得到有關津貼。我不明白處理這些個們則在事發後幾天甚至幾星期後才得到有關津貼。我不明白處理這些個大的差異,我亦無意在此作出任何猜測。其實我們都知達。些死者家屬在痛失家人之後,境況已是相當凄凉,再加上不少死者是來說時會出現這麼大的差異,我就已是相當凄凉,再加上不少死者是來說是也不可能成立一個不過不過更的。我贊同較早前羅致光議員所提及的,就是有否可能成立一個不過不過,以便即時處理家屬經濟上的問題,待這些家屬日後獲得其他方面的資助或賠償後,才將有關金額歸還這個基金。我認為這個概念是值得我們考慮

的。因此,我促請有關方面能對所有的工業意外傷亡者的家屬一視同仁,以 最短的時間為他們提供援助,讓他們能夠渡過難關。

主席先生,我支持原議案及修正案。

李卓人議員致辭:主席先生,剛才很多議員說了關於安全問題的意見。現在 我想集中談談對於工傷者家屬照顧的問題。

我第一份的工作,是去探訪和幫助因工死亡人士的家屬。十多年來,這些死者家屬所遇到的問題,我想告訴大家,其實是沒有甚麼分別。每次發生意外之後,死者家屬所遇到的問題其實都是在重複中,因為制度從來沒有改變,制度基本是有"一個黑洞三個漏洞"的問題。"黑洞"是甚麼?這"黑洞"是連最基本的殮葬費和安家費都沒有。法例說:如果死者沒有家屬就由政府來負責。但我想問:為甚麼僱主無須負責?每次死亡事故發生時,我都要與死者家屬去與承建商討殮葬費和安家費,有時我個人也覺得沒有甚麼意義,因為在家屬最傷痛的時候,還要每天四處奔跑,去求那些人發放安家費。所以剛才有議員說,希望設立一個基金,我認為這是不應該的,為甚麼不直接地要求僱主負責?為甚麼每次追討安家費都像"講價"一樣?最近,我有位同事由5,000元討價還價到20萬元,如此討價還價有甚麼意思?家屬還有甚麼尊嚴?

幾個月前,我再次拉着橫額和承建商理論,最後他還是願意付安家費。 現在我還記得十多年前,有間承建商向我說,他們安家費的公價只是5,000 元,他告訴我為甚麼只是5,000元,因為日後可能會有很多人要求他們付安 家費。制度為甚麼不可以改善,使死者家屬不再需要去逐一乞求承建商、大 判、二判?我認為政府可以首要為家屬做的是清楚修訂法例,指明如果發生 事故的時候由承建商負責殮葬費,然後每月支付等同死者薪酬的安家費給家 屬,直至家屬收到賠償為止,其間的時間大約年半至兩年,使他們在最傷痛 的時候,不再需要東奔西跑。這是我最希望政府做的事。

剛才我亦說過有三個漏洞。第一個漏洞,是現在計算賠償是計算"依靠程度"。甚麼是"計算依靠程度"?我舉個例子,"籠笠"事件中有位死者的父母有工作,而兒子剛出來做事,他因工死亡後,在計算依靠程度時,由於父母有工作而不大依靠兒子的工資,所以死者父母最後得到的賠償只是10萬元,一條生命只值10萬元!為甚麼?因為這是以依靠程度來計算。另一個情況,全家只靠一個死者工作來維持家庭開支,但他給予家庭的錢很少,若他一旦死亡,因為依靠程度少,所以最後賠償也是很少。所以,我建議另一

個計算方法是,根據工資來計算,再不用依靠程度來計算,例如以七年工資 計算則乘以七年。

至於第二個漏洞,其實現在的計算方法是,40歲以下最高可獲賠償七年工資、40至55歲可賠償五年、55歲以上賠三年,這對孤寡非常不利。例如最近天橋倒塌事件,大家都知道,死者的遺屬有一個只得三歲的兒子和妻子又剛懷孕,而最多只獲賠償七年工資,七年後,大兒子屆時十歲、小的才六歲,還有十多年的艱難生活。教他們如何熬過去?為甚麼我們不可以立例,令死者未成年的家屬未滿18歲前都無須擔心生活?不要對我說叫他們去領取公共援助,這是法例可以做的事情,每年有二百多人因工死亡,為甚麼我們不可以令遺屬生活較安樂,使死者的兒女到18歲前都不用擔心。

第三個最大的問題是,現在最高月薪限額只是18,000元,比《僱傭條例》 所保障的22,500元還要差,實在不明白政府為何還不修訂這項法例?其實應 與工資掛鈎,而不應有18,000元的上限。我希望政府會改善這項法例。

現在我想討論一些關於安全的問題,我覺得現在工傷意外的情況,有如一場屠殺,大家可能認為我說"屠殺"是過度嚴重,其實並非我率先採用的字眼。我記得大約六、七年前,總督曾經說過要停止這場"屠殺",但他說完後的六、七年,屠殺仍沒有停止。我認為核心的問題是"錢作怪",剛才有很多議員說罰錢沒有用,是的,因為他賺的錢很多,罰款微不足道,所以,最後還是"錢作怪"。我認為唯一的方法是"斷米路",我很高興剛才田北俊議員都支持這方案,就是勞資雙方都支持的扣分制,像違例駕駛扣分制一樣,停其牌、"斷其米路",他們便會正視。

其次,我知道政府很快會推出安全委員會的建議,其中有一個安全代表,我最不滿的部分是,安全代表沒有實權。我希望政府立例時,應賦予安全代表實權,使每個地盤有個工人安全代表可以很清楚地執行法例,遇到有意外發生時,可以即時向政府報告。

謝謝主席先生。

**何敏嘉議員致辭**:主席先生,這次已經是本立法年度第二次有關工業安全的 議案辯論,足見香港的工業安全問題受到各方面的關注。

建造業的工業意外,一直處於一個非常高的水平,佔全港所有工業意外 三分之一以上。這些數字其實顯示一些較嚴重的工業意外情況;很多輕微意 外,由於缺乏完善的紀錄系統,經常是並未計算在內,所以,確實的數字應 是遠超過政府所公布的。

民主黨一直非常關注工業安全問題,在上一次會期,我們曾提出相關的 議案。而在今年一月,曾健成議員對黃秉槐議員有關工業安全的議案更提出 了修正。

在上一次的議案辯論中,民主黨已清楚表明對政府在《工業安全檢討諮詢文件》中提出所謂"自我規管"的策略,持相當保留的態度。因為我們見到的,是完全沒有同步的修訂立法或同步的執法改善,所謂鼓勵"自我監管",只不過是空談,不會真正的改善工業安全。

在六月中,政府因接連發生重大工業意外,於是提出了12項所謂加強工業安全的措施,但其中一半是現時已有執行的工作,而其他的亦只是一些短期和計劃中措施,只是將所有新舊措施放在一起,濫竽充數,我們仍未能看到政府真正有誠意,為本港工業安全,特別是建造業工業安全,提出長遠和具體改善的方法。

現時本港的工業安全法例,根本不能配合整體建設的步伐。經濟發展雖 很依賴基礎建設的發展,但亦不能因此而犧性建造業工人寶貴的生命。

現時一些有效的工業安全措施,如扣分制度,只適用於政府工程,對於絕大部分私人機構進行的工程項目,政府可以說是任由其自生自滅,只是當有嚴重工業意外發生時,才追究責任及提出檢控。這種"馬後炮"式的策略,完全是放任的態度。

我們不能要求政府每天都派人到各地盤巡視,但我們要求的是建立一套 完整的監察及預防制度,例如曾健成議員提出有關改善安全主任制度的建 議、扣分制等。

最近發生多宗工業意外事件後,也暴露了當嚴重工業意外發生後,受傷工人或死亡工友家屬所能得的即時援助,是嚴重不足的。這其實是對香港整體公共援助制度的一個諷刺,原來福利署是依靠傳媒報道多寡作為如何對工傷家人作出援助的指標。羅致光議員提出一些構思,我們希望在工業意外發生後,盡快幫助到一些工傷和死亡工友的家屬。

主席先生,我特別在此一提的是教育統籌科成立的跨部門工作小組。在 六月二十四日(即前天),人力事務委員會的特別會議裏,教育統籌司在被 質詢有關跨部門工作小組是否常設時,他說: "常設,便要有具體的工作範

圍和目標。"我對於這個答覆的理解是,這個跨部門工作小組不是常設的,亦沒有具體的工作目標。陳婉嫻議員提出的修正案,其中一項是要求一個常設的委員會,常設和跨部門固然重要,但我們覺得更加重要的是政府要訂定清楚工作目標,並非僅是一個跨部門的會議便可做到;跨部門的會議可以繼續開、每天去討論,但是沒有結果的。我們要求的是要訂定清楚的自己,要交出成績來,可以告訴香港市民知道,這個小組經過討論了一段時間後,要交出成績來,可以告訴香港市民知道,便等於來,很積極的去改善問題。我當時質詢,得不到一個清楚答覆。今天的辯論來得正好,在此,我要和政府辯過明白,希望稍後可以有一個清楚的回應。我不要一個只是"做秀"的小組,假裝積極。我要求教育統籌司具體的方言的時況?他可否告訴全港市民知道,這個小組何時可以提出一個全面改善工業安全的建議?如果他不能承諾全面改善的建議,我亦希望教育統籌司可以解釋,為何跨部門的小組都會做不到?

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**PRESIDENT**: Mr HO, two more sentences to complete your speech.

**何敏嘉議員**:主席先生,我希望這個跨部門的工作小組可以早日完成改革大業,交出成績。謝謝主席先生。

鄭耀棠議員致辭:主席先生,港府過去處理工業安全問題,皆是採取"頭痛醫頭,腳痛醫腳"的方式,非有流血的教訓,是不會做出任何政策缺失上的補救,即使去年公布的《香港工業安全檢討諮詢文件》,其建議也追不上本地的經濟發展。報告仍是了無新意,只是將過往"工業安全"的一套構思舊調重彈,對目前經濟轉型下的行業(特別是第三產業)工人安全保障全無提及,工聯會已一直對此深表不滿。

主席先生,有鑑於過去數星期來一場又一場血的教訓,工聯會再次重申,政府應面對現實情況以及經濟的不斷發展,而把過去分割的、支離破碎的,沒有系統的守舊工業安全政策改變,換上一套全面的、有系統的職業安全政策。

主席先生,陳婉嫻議員所言工業安全諮詢文件的建議,我們雖未全盤認

同,但盡早落實也是好事。建議中有:勞工處處長有權可向危險工地發出停工令或改善的通知書。本人認為,短期來說,由於有關建議已寫成草案在本局審議,故盡早通過是好過採拖延政策的,對這問題持相反意見的議員實應自我反省。

本人並希望在草案通過之後,可在工業安全上有一方寸的進展,並朝着改進的方向邁進,最終使前綫工作者 — 勞工處工廠督察,也可有權向有關危險工作場地發出停工通知書或改善通知書,而不要再以例如資源不足去推搪不做。

造成至今工業意外頻生,其中一個原因固然是本地工業安全制度缺乏系統,但另一原因就是本地對違反工業安全法規的罰則不夠全面,法庭往往礙於很多因素,包括法律技術性問題,而不能向有關工程的總負責人 一 "大老細" 追究最終責任,只是罰款一萬幾千元了事,可判刑的機會、坐牢,可以說至今為止還未做到零的突破。因此短期來說,本人更建議,港府可先考慮在目前《工廠及工業經營條例》第6A條,有關東主的一般性的責任中,列明"大老細"有刑事責任。

最後,雖然工聯會認為,要改善目前的情況,最重要的就是政府要成立 一個具實權的法定機構,統籌一切職業安全健康事宜。主席先生,本人謹此 陳辭,謝謝。

**PRESIDENT**: I now invite Mr TSANG Kin-shing to speak on the amendment to his motion. You have five minutes to speak on the amendment, Mr TSANG.

曾健成議員致辭:主席先生,我想就陳婉嫻議員所提出的修正建議作出以下的回應。

將跨部門的會議定為長期性,我覺得是"架床疊屋"的做法。基本上,大家可以看到今次教育統籌科所統籌的一個所謂跨部門會議,純是一個"做秀"的表現,只是針對在六月份發生的這麼多宗意外而進行檢討,並沒有作出前瞻性、長遠性的檢討。

現時在政府處理工業安全的問題上,足證多個部門毫無工作效率,所謂

跨部門會議,基本上是中央政府部門與部門之間的協調以及溝通不足的現象。若要防止、減低工業意外,部門與部門組織之間應該避免"架床疊屋",不應該將安全標準和施工程序與對等的工業安全環節分開,更不應由不同的部門去處理工業安全,這是浪費納稅人的資源。我覺得政府應該由一個專責部門去統籌、協調及監察執法的工作。王永平先生所下令的12項建議,並不相等於當年"十二道金牌召岳飛"那麼有效。當年"十二道金牌召岳飛"就絕對有效,總之岳飛回去就是要死。而今次這12項建議,歸根結柢,如果沒有實際改善的話,工人都會因意外而死亡的。

主席先生,關於那份所謂工業意外諮詢文件所建議的自我規管,我覺得基本上現在沒有完善的執法,有法不依,執法人手不足,何來完善自我規管呢?所謂"自我規管",實際上說根本是"無皇管",要是"有皇管"的話,就不會發生青衣橋六月六日六個人死亡的意外。當天,勞工處曾派人去地盤進行諮詢,當勞工處人員離開後,傍晚時分工作台便塌下來,六個人便這樣送命了。那麼勞工處在教育統籌科統籌下所執行的所謂"自我規管"又規管得如何呢?

主席先生,我覺得今次陳婉嫻議員的修正案和我的原議案,無論黑貓、白貓或其它的富貴貓也好,都是支持工業安全的。鑑於今次意外,鑑於陳婉嫻議員將"跨部門"修正為"專責部門",我覺得有關工業安全的諮詢文件不應再倡議"自我規管"。謝謝主席先生。

教育統籌司致辭:主席先生,我多謝曾健成議員就"工業安全"提出議案,以及陳婉嫻議員就議案所作出的修正。我亦非常多謝在今晚這個辯論中發言的議員。有關"工業安全"問題的議案辯論,正如何敏嘉議員指出,今次已經是本局在六個月內的第二次。這固然是由於議員十分關注最近數星期,本港連續發生多宗引致傷亡的嚴重工業意外,同時亦反映出社會非常重視本港的工業安全問題,要求政府和有關方面齊心協力,共同加以改善。

在回應議員在議案辯論中所提出的論點及建議之前,我想首先談一談過去數年,政府在改善工業安全方面所做過的工作。藉此表明政府是有一套完整的改善工業安全的政策、工作目標和具體計劃。

改善工業安全的政策和措施

或許我應從一九八八年開始說起,因為當年政府成立職業安全健康局("職安局"),這個由政府、僱主和僱員代表組成的獨立組織,說明政府、僱主及僱員三方面都有共同的責任去提高工業安全與健康的水平。

職安局自後成立以來,在促進全港工人職業安全和健康方面,發揮積極 作用,而且甚有成效。稍後我會再詳述職安局如何在提高香港職業安全健康 的工作方面,繼續扮演一個更加重要的角色。

除成立職安局外,政府一直致力改善本港的工業安全,並在有需要時修訂有關法例。《工廠及工業經營條例》是規管工作安全和保障工人健康的主要法例,政府在一九八九年作出修訂,規定僱主和僱員的一般責任。根據有關規定,僱主必須採取一切合理可行的步驟,確保在其工地上工作的全部僱員的健康和安全。工人在工作時亦必須小心,以及與僱主合作,採取安全措施。

政府在一九九零年將《工廠及工業經營條例》的適用範圍,擴大至包括 飲食業。我們亦根據該條例訂立新規例,在一九九三年和一九九四年,分別 規定起重機和懸空工作台的操作人員,必須經過訓練和獲得簽發操作認可證 明,才可擔任有關工作。

機場核心計劃工程於一九九一年展開,政府作為僱主,制定特別的合約條件,以提高工程計劃下各個地盤的工業安全水平。例如,機場工程的承建商須僱用較多安全人員實施安全計劃、成立地盤安全委員會、進行安全審查,以及為工人舉行"工地安全簡介會"。其後,政府的工務計劃和房屋委員會所進行的工程,亦採用這些特別合約條件,改善有關地盤的安全情況。

為實踐在一九九四年施政報告中所作的承諾,即更全面和更積極改善本港工業安全水平,政府由一九九四年年底開始,全面檢討香港的工業安全情況,並於一九九五年七月中發表《香港工業安全檢討諮詢文件》,徵詢各界的意見。

諮詢文件共提出45項建議,以改善香港的工業安全紀錄。政府認為確保工業安全和健康的主要責任在於僱主,因為僱主如不改善有危險的工作環境,而讓僱員在這些環境中工作,便會發生意外。政府的最終目標,是僱主和僱員都會齊心協力,關注本身和別人的安全,而政府的角色是提供一套立法和行政併合的架構,協助工業經營者成立安全管理體系,從而達致自我監管的目的。但政府不能完全依賴僱主和僱員,所以在自我監管之餘,必須加強執法作為後盾,特別是對付那些未能自我監管的工業經營。政府、僱主和僱員三者有份參與的安全管理理念,是工業安全檢討最重要的建議。我想指

出,這套安全管理制度,以及諮詢文件提出45項建議中,其他有關改善工業安全的策略,在諮詢期間是得到公眾廣泛支持的。

總督會同行政局在研究各界人士在諮詢期間發表的意見後,在一九九五年十一月接納工業安全諮詢文件提出的45項建議,作為全面改善善本港工業安全的藍本。政府亦由那時起着手推行諮詢文件的各項建議。其中已經實施的,包括改組勞工處工廠督察科,成為職業安全及健康科,由新設的副處長領導,並每年增撥4,000萬元的經常開支,在本年度加設72個新職位,亦會在未來數年再增加29個新職位,以加強職業安全及健康科的執法工作,以及協助僱主採納安全管理制度。

正如我較早前提及,職安局會在工業安全方面擔當一個更重要的 角色。諮詢文件建議,職安局應負責統籌和全面推行與工業安全有關 的工作,包括訓練、教育、宣傳、推廣及研究。我很高興指出,在這 方面政府得到職安局的通力合作。

在本財政年度,政府已經批准給予職安局一項高達4,750萬元的預算計劃,比去年該局的實際開支增加超過55%。其中有關職業安全及健康宣傳計劃的支出,達到1,160萬元。此外,政府亦額外撥出550萬元,作為職安局在香港科學館設立工業安全及健康展覽場地的費用,另外也撥出310萬元,以便該局開辦兩項為僱員提供的安全訓練課程。作為教育統籌司,我會優先處理職安局的要求,並在有需要時,考慮在我控制的資源中,調撥部分資源給職安局。

除此之外,政府亦會全面落實經修訂的法例和制訂新法例,以改善工業安全。我在本年五月二十二日,將《1996年工廠及工業經營(修訂)條例草案》提交本局審議,而這項條例草案是有關授權勞工處處長發出暫時停工通知書和敦促改善通知書。另外,政府亦正進行有關的法例草擬工作。預計在下一個立法年度向本局提交的條例草案,包括《工廠及工業經營(修訂)條例草案》(有關引入安全管理制度),我亦在此說會考慮剛才有些議員對安全管理制度的意見;《職業安全及健康條例草案》(這條例草案有關向非工業界僱員提供保障);《工廠及工業經營(密閉場地)規例》草案,以及《建築地盤(安全)規例》草案這兩個草案是有關提高該等地點工作安全措施水平。

總括來說,《工業安全檢討諮詢文件》提出的45項建議,有16項是有關修訂法例,其中兩項現已完成,其餘14項正在不同的草擬階段,

而勞顧會已經研究及同意了其中八項建議。諮詢文件有九項建議是涉及政府部門的行政措施,其中八項已經實施。關於職安局或其他非政府組織的16項建議都已陸續付諸實行。至於兩項政策方面的建議其中一項,以及另外兩項需要政府監察的建議,亦已落實推行。

最近接二連三不幸發生嚴重的工業意外,令人誤以為香港的工業安全水平下降。我要指出,在政府及有關組織,例如職安局多年來努力之下,本港的工業安全水平實際上正逐步改善。例如整體工業意外數目,由一九八八年的59,508宗,降至一九九五年的41,001宗,而工人發生意外的比率,亦由一九八八年每1 000名工人發生58.88宗意外,下降至一九九五年的52.10宗。我列舉這些數字,並不是要證明我們已經扭轉了惡劣的情況。政府一向實事求是,雖然最新的紀錄反映情況已有改善,但我們絕對不滿意,並認為香港的工業意外數目應該繼續下降,並且要大幅度減少。我們在過去幾年,特別是去年的工作,便是朝着這個目標去做。

## 最近的行動方案

我再舉另外一個例子,剛才曾健成議員指出安全主任的重要性。 我們剛才提到建議的其中一項措施,我們已經落實,是勞工處會聯同職安局在七月十九日,為本港400多名安全主任舉辦研討會,屆時將會就安全主任的職責、功能、工作經驗,以及安全主任與政府和僱主

的關係等問題,作廣泛的交流和深入的討論。政府亦會在七月份的立法局人力事務委員會會議上,諮詢小組對《工作場地安全約章》的意見,藉以加強僱主和僱員對工業安全的認識,而安全約章的最主要目的,是說明僱主和僱員在工業安全的責任。

#### 統籌及協調機制

修正議案批評政府在防止工業意外方面,並沒有一套有系統和全面的監管政策,亦沒有一個法定機構統籌一切與職業安全健康有關的事宜,並且促請政府長遠來說應成立一個有實權的法定機構。我想對有關批評作出回應。

首先,我要指出負責工業安全的各個政府部門各有其清楚界定的職權範圍,每個部門根據職權範圍內的有關法例執行職務。部門之間經常接觸,整體上運作良好,因此我絕不同意政府在運作上缺乏系統和全面性的說法。況且,根據現行制度,在部門問責上並無問題。

我明白建議成立一個有實權及跨部門的法定機構來處理工業安全問題,是一個善意的建議。但經過細心考慮後,我要指出,這個建議只會弄巧反拙,達不到議員希望的目的。因為負責工業安全的各個政府部門,處理極為廣泛的專業及技術性事項,勉強用一個機構去處理這些錯縱複雜的問題,只會造成一個龐大的官僚架構,對實際改善效率及處理工業安全問題絲毫沒有幫助。如果這個機構是從不同的政府部門,例如勞工處、海事處、屋宇署等抽調人員來組成,有關部門的架構和人事組織可能會因而支離破碎,亦會導致這些部門和所謂統籌架構出現協調的問題。事實上,現時發生的工業意外,與政府的現有的行政架構並無關係。

不過,回應陳婉嫻議員的關注,我同意可以進一步加強各有關部門的協調,所以我計劃在教統科增設一個工業安全小組,專責統籌及監察政府在工業安全方面的政策及工作。我亦會在下月召開第二次跨部門會議,檢討各部門在推行工業安全方面的工作進度。

### 巡查工作

至於有關抽調職安局及勞工處人手巡查全港的工作場所的建議,我剛才已指出,根據跨部門會議制定的措施,勞工處已經抽調人手巡查所有地盤,並特別針對三類危險程度高的工作場所。至於職安局方面,我要澄清職安局的人員並無執法權力,他們不能夠巡查工作場所

或提出檢控。職安局的主要功能,是提供有關職業安全和健康的訓練和教育,以及進行宣傳和研究。職安局已因應最近發生的連串工業意外,加強宣傳危險性高的工作場所的安全。至於勞工處,我剛才已經報告該處已加強巡查工作。我們會檢討整體情況,以決定勞工處未來巡查工作的重點。

我絕對同意修正議案提出的第三項建議,就是盡快落實《香港工業安全檢討諮詢文件》的所有建議。正如我在較早前提及,政府已經或正在落實諮詢文件的各項建議,而我們亦正在草擬多項有關修訂工業安全條例的草案。

我想藉這個機會強調,立法局在立法改善工業安全方面,扮演極其重要的角色。正如各位議員都知道,政府在一九九五年十月向本局提交的《1995年建築物(修訂)(第三號)條例草案》,至今仍在條例草案委員會階段。該草案建議引入地盤監察計劃書,界定有關的享業人士對建築地盤的安全措施的責任。我亦在五月二十二日提交房發出暫時停工通知書及敦促改善通知書。我想特別強調,假如勞工處處長有權發出暫時停工通知書,便可在最短的時間禁止僱主或承建處處長有權發出暫時停工通知書,便可在最短的時間禁止僱主或承建商進行可能危害工人的工程和操作。立法局人力事務委員會較早前表示全力支持這項條例草案,並建議條例草案委員會應優先研究。不到有關草案的審研究工作,至今仍未有實質的進展,令我有點失望。剛才.....

何敏嘉議員:主席先生.....

**PRESIDENT**: Are you prepared to yield, Secretary?

**SECRETARY FOR EDUCATION AND MANPOWER**: I would like to finish my speech, Mr President.

**PRESIDENT**: Carry on, Secretary.

教育統籌司:我很多謝鄭耀棠議員剛才發言時支持這個草案,希望其他議員加入支持的行列。事實上,這兩項草案對改善工業安全有重大幫助。因此,我呼籲各位議員,盡早通過這兩項條例草案。

我要指出一個事實:改善工業安全,其中最重要的一項工作是修訂法例,例如加強執法權力和制定安全管理制度。我希望立法局議員在向政府提出意見,甚至嚴厲批評之餘,不要忘記各位有責任盡快審理和通過政府根據一九九五年諮詢文件提出的建議來草擬的法例。除了剛才我提及的兩項條例草案外,政府將會在下一個立法年度,向本局提交有關改善工業安全的多項條例草案。政府和市民都會密切留意議員在運用立法權力時,是否言行一致和承擔責任。

### 法庭判罰

輿論和市民普遍認為,現時法庭對違反工業安全法例的案件普遍判罰過輕,我了解及尊重司法獨立的重要性,但鑑於本局議員及社會人士在這方面的關注,我已去信司法機構政務長,反映民意。另一方面,勞工處會密切留意有關工業安全檢控個案的結果,如認為某些個案的判罰太輕,便會要求律政司提出上訴。

### 計分計劃

有關引入承建商停牌和扣分制度,以及規定承建商須定期提交安全紀錄的建議,工務科現正研究一項計分計劃,以便政府在工程招標時,可以用來評估承建商的投標資格,而承建商的工業安全紀錄,將會是其中一項重要的考慮因素。即使承建商以最低價格承投政府工程,假如他的工業安全紀錄差劣,亦不會投得工程合約。工務科現正與有關部門研究這項計分計劃的細節,並會參考其他國家的實際經驗。

# 為傷亡者提供援助

至於最後一項建議,是為工業意外傷亡者及他們的家人提供所需協助。政府有多個部門負責提供各方面的援助,例如社會福利署透過各種渠道,或在接獲因工受傷的工人或傷亡者家屬的直接申請後,便會派員主動聯絡有關人士。社會福利署為這些人士提供的服務包括金錢援助、公共房屋體恤安置、照顧子女服務、心理輔導,以及其他家庭支援服務。社會福利署有時未能在第一時間取得因工受傷的工人或傷亡者家屬的資料,因而未能即時提供援助,勞工處和社會福利署已達成協議,勞工處日後會把工業意外的死亡個

案,立即通知社會福利署。

除社會福利署外,政務總署亦會從華人慈善基金撥出最高5,000元的款項,為因工受傷的工人或傷亡者的家屬提供額外援助。另外,這些人士還可透過法律援助署的協助,就僱員補償及個人傷亡提出訴訟,索取應得的賠償。在此我想說我細心聆聽了李卓人議員有關補償的意見。

## 安全訓練

我想回應曾健成議員和夏佳理議員有關工人接受安全訓練和平安卡的建 議。政府承諾會積極考慮如何加強工人安全訓練的工作。

#### 總結

我想作一個總結,重申三點。第一:政府非常重視工業安全,並會繼續優先處理與工業安全有關的工作。政府和有關部門將會承擔責任,務求大幅減少工業意外的發生。第二:要徹底改善本港工業安全水平,需要政府、僱主和僱員三方面的努力。第三:我們的最終目標,是推動工作場所的安全文化,使僱主自覺地為僱員提供安全的工作環境和裝備,而僱員亦樂意佩戴安全裝備和遵守安全規則。

最後,我再次呼籲立法局議員對政府提交有關改善工業安全的條例草 案,無論現在或將來,給予實質支持,使這些條例草案能夠早日實施。

謝謝主席先生。

PRESIDENT: Mr Micheal HO, do you still wish to seek elucidation?

MR MICHAEL HO: Yes, Mr President.

**何敏嘉議員**:主席先生,我要求教育統籌司告訴我們為何他先前發言時幾次 提到我們研究兩項有關的條例草案是慢了。教育統籌司知不知是何時.....

**PRESIDENT**: Mr HO, this is not a debate. If you wish to seek eludication, please seek the elucidation.

**何敏嘉議員**:主席先生,我要求教育統籌司解釋為何說我們的研究不夠迅速。

**PRESIDENT**: You are raising that point of elucidation — but not to make a point that you wish to have an argument with the Secretary, if the Secretary is prepared to answer it. Secretary, not a very long answer though.

教育統籌司:主席先生,很簡單,我的演辭沒有這樣說。

Question on the amendment put and agreed to.

**PRESIDENT**: Mr TSANG Kin-shing, you are now entitled to your final reply and you have five minutes 16 seconds out of your original 15 minutes.

曾健成議員致辭:主席先生,在高峰會期間,教育統籌司說有350個地盤突然間受到巡查,成功檢控了79個。為何不先前去巡查呢?這個時候去巡查,有136張告票(佔了四分之一)是有問題的。全港有5 000個地盤,四分之一有問題,情況便真的很嚴重了。如何去補救呢?剛才提出三個要求,當局承諾會落實的,我卻聽不到有任何撥款計劃,聽不到資源會增撥下去。難道會變戲法嗎?我真不知會變甚麼?我覺得他是陶醉於八年抗戰之中。在一九八八年說到一九九六年,八年抗戰,中國便勝利。但是我們香港工人,就是用生命去換取血汗金錢,永無止境,八年如一日,都沒有改變。事實告訴我們,就是沒有改變的。事實亦告訴我們,當有人手去巡查地盤之後,即時有發出告票成功檢控79個地盤。去巡查350個的地盤,就有79個地盤出現問題。若巡查3 500個地盤,豈非有790個地盤有問題?我們工人的生命,就在他的手上,視乎人手多寡而已。

主席先生,對於六月份發生的工業意外,我大部分都有跟進。且讓我說出一個未獲報道的個案,當事人真有可能死不瞑目,因為時間是午夜十二時,而報紙則截了稿。我到達現場(青衣污水處理廠)時,我問消防員:"那個傷者救起來了嗎?"他回答說:"已經救起了,送到瑪嘉烈醫院去了。"

我立刻駕車去瑪嘉烈醫院,見到護士便問: "那個傷者傷勢如何?" 那護士 答:"來了一截。"我問:"死了多少人?"他說:"死了一個。"我繼續 追問下去,才知道那個人身首異處,屍體分開了五截包裹着。這個人很不 幸,總督沒有關注他,沒有關照他,他死了也沒有關照他,沒有提人及他的 名字。我去向死者老闆追殮葬費,我問的是渠務署,不得要領。剛才李卓人 議員說,往往要討價還價,由5,000元爭論至20萬元。問題是在過程中要討 論價還價也不要緊,老闆沒有良心也不要緊,但今次的政府部門更加不仁。 在總督關注六個人死亡那一宗事故中,所有部門當晚立即出來,爭相協助。 接着發生另一宗事故,我的助手致電給勞工署助理副署長,他告訴我的助 手:"你告知曾先生,每一宗都是這樣攪,我們如何攪呢?我們理不了那麼 多宗的,你叫他自己跟進啦!"不同的人,有不同的對待,接着我立刻致電 給他,問他是否這樣說,他便說: "不是,沒有空,可以找另一個副署長跟 進。"他改了口風,叫我自己約僱主、承建商。這是甚麼部門?同樣是勞工 處的部門,同樣是有人死亡,有不同待遇?假若傳媒的焦點集中在這個死 者,相信死者的金塔可以用金造了!我代表工人感謝王永平先生,因為六月 十八日的高峰會,巡查了350個地盤,有79個地盤可以逃過大難。我想問: 當局是否真的不夠人手呢?現在勞資雙方、立法局議員都支持增加資源,增 加人手的,為何不提出呢?不坦白呢?

主席先生,我要恭賀王永平先生。為甚麼?因為香港是一個行政主導的政府,所有官員無須因任何政治壓力、任何責任而下台,所以,王先生可以很舒服的坐在辦公室,高高興興上班去,平平安安歸家來。這個口號可以在所有官員身上應驗,但在全港200萬的工人身上是未必應驗的。財政預算案沒有調撥資源,當局能做甚麼?難道會生金蛋嗎?我希望來年的預算案、未來的工作中,能增加人手、增加資源,為我們打工仔的性命提供保障。

謝謝主席先生。

Question on the motion as amended by Miss CHAN Yuen-han put and agreed to.

### IMPLEMENTATION OF "ONE COUNTRY TWO SYSTEMS"

# MR MARTIN LEE to move the following motion:

"本局促請中國政府全力落實"一國兩制"、"港人治港及高度自治" 及不要干預香港內部事務;本局並呼籲香港市民捍衞香港民主、法 治、人權、自由及生活方式。"

李柱銘議員致辭:主席先生,首先我想談談今次提出議案的原因。

現時香港離九七年七月一日主權回歸,只有一年零四日時間,按常理,香港人應該很清楚看到九七後"一國兩制"的圖像,同時亦體驗到"現行生活方式不變"的承諾。但很遺憾,到今天為止,我們看不清楚九七後"一國兩制"落實的可能,"一國兩制"的前景不單止模糊不清,而且陰雲密佈。

魯平先生到外國巡迴推銷"一國兩制",向外國傳媒派定心丸,這令我 記起11年前,我在本局第一次辯論時的演辭,其中有以下一段:

"沒有人願意見到香港政府變成"跛腳鴨",單憑官員在屋頂大聲疾呼是無補於事,最重要是做出來,給我看。沒有人願意見到中國政府在過渡期及九七後干預香港,單憑中國領導人在屋頂大聲疾呼是無補於事,最重要是做出來,給我們看。"

想起這段說話,令我倍覺憂傷,因為11年前的這番話不幸完全言中。

- "一國兩制"已逐漸變成空洞的承諾,我們看看中方做出來的是甚麼?
- 前預委建議閹割《人權法》,還原殖民地惡法;
- 一 籌委會通過成立臨時立法會,以"橡皮圖章"來取代民選議員。

鄧小平當年構思 "一國兩制"時,曾抱着一個崇高的理想,並希望世界各國能夠以同一方法來解決紛爭。但可惜十多年的實踐,我們見到中國政府的政策離開這崇高理想越來越遠。

#### 一國兩制的精神:

一國兩制不單止是指內地社會主義與香港資本主義有別,背後其中一個重要隱含的意思,就是內地會有"干預"的傾向,否則當年中國領導人無須用"兩制"來將香港與內地分開,並且賦予香港高度自治。而同時亦有一個假設,就是香港人要團結一致,去抵禦這些干預。

單從《聯合聲明》、《基本法》等憲法文件,不能建立一國兩制,因為這些文件只能為一國兩制提供一個法律規範的基礎,重要的是在實踐過程中,中、港雙方要共同參與,中國政府要尊重香港這一制度,不要作出任何干預,而香港方面,則要敢於捍衞我們這一制度。這是我過去所提出的"搖搖板"比喻。中國與香港各在搖搖板的一端,中國重,香港輕,要令一國兩制遊戲可以玩下去,中國要"就住"香港,不讓內地一套滲入香港。另一方面,香港這一端要同心協力,萬萬不能容許或甚至邀請中國作出任何干預。很多時,我們會容易為了自己利益,而邀請中國政府出面,去干預一些我們不認同的政策,我們必須抑制這些衝動。

# 香港這"一制"的重要性:

當我們要捍衞香港這一制度時,必須要總結出究竟香港現行制度、方式,有甚麼地方是最重要的。我認為過去香港賴以成功的主要因素包括以下 幾方面:

### 一)法治精神:

內地與香港最大的分歧是:內地是黨大於法,沒有法治觀念。香港 九七後要繼續發展,必須有完善的法制及法治精神。 "高官可以做 的事,市民一樣可以做,市民不能做的,高官亦不能做。" 這是法 治精神所在,我們香港人必須全力維護,法治是一切制度運作的基 石,基礎不穩,整個制度便會倒塌。

## 二)人權自由:

香港市民現時享有高度言論及其他自由,而這些人權亦得到法律保障,市民可循各種合法途徑表達意見,包括請願、遊行、集會、示威,這都是香港生活方式的一部分。

# 三)民主政治

香港已逐步建立民主政治,雖然我們認為民主步伐發展太緩慢。但 過去的實踐,已逐步建立出香港獨特的政治文化,當中包括我們的 議會制度、文化、輿論的監督、公平的選舉競爭及公開、高透明度 的政府、廉潔及有效率的公務員隊伍。要令民主政治在九七後繼續 發展,必須鞏固現有的基礎,不能容許中方粗暴干預,以傀儡取代

民意代表,限制輿論監督功能,以委任方式或不公平的選舉制度, 對付不同意見政黨及破壞公務員隊伍的效率。

### 四)公平競爭:

公平競爭是香港自由資本主義制度發展的動力,我們必須防止九七 後出現威脅公平競爭的干預,以政治來干預經濟,影響市場運作, 同時更要密切防範貪污行為侵蝕香港經濟活動。

稍後,我們民主黨議員會就上述各種九七後可能出現的干預,作出詳細 剖析。

張炳良議員會就九七後內地省市的干預及魯平先生在新加坡的言論作出 回應,並表達對朱幼麟議員修正的立場;張文光議員會就葉國謙議員修正作 回應,對中國九七前後種種干預表達我們的看法;何俊仁議員會就如何維護 香港人權、法治作出分析;鄭家富議員會對魯平先生有關九七後香港新聞自 由的說話作回應;而黃震遐議員則集中討論在經濟層面的干預。

最後,我想向各位同事指出,今次辯論是希望能夠盡量表達我們所理解的"一國兩制",及對達致"一國兩制"之道,提出自己的看法,從中我們可以求同存異,得出香港人對"一國兩制"最基本的共識。

主席先生,環顧所有自由、民主國家,在建立民主、自由過程中,必定通過人民團結一致去爭取。九七後香港要建立一國兩制也一樣。假若今天我們袖手旁觀,只求個人利益和權力,而不問原則,以政治投機心態來依附權力,一國兩制肯定不會從天而降。將來我們的子孫問,究竟我們為建立一國兩制盡了甚麼責任時,我們將會啞口無言!最後,我們都要面對歷史嚴厲的審判。

主席先生,本人謹此陳辭,動議議案,希望議員在歐洲國家盃準決賽進行中仍能踴躍發言。

Question on the motion proposed.

PRESIDENT: As Members have been informed by circular on 21 June, Mr IP

Kwok-him, Mr David CHU and Mr LEUNG Yiu-chung have separately given notices to move amendments to this motion. As there are three amendments to the motion, I propose to have the motion and amendments debated together in a joint debate.

Council shall now debate the motion and the amendments together in a joint debate. I will call upon Mr IP Kwok-him to speak first, to be followed by Mr David CHU and Mr LEUNG Yiu-chung; but no amendments are to be moved at this stage. Members may then express their views on the main motion as well as on the proposed amendments listed on the Order Paper.

葉國謙議員致辭:主席先生,時光飛逝,一九八四年簽署的《中英聯合聲明》,至今已有12年。距主權回歸的日子,只尚餘369天。《聯合聲明》的簽訂,清楚奠定了解決香港過渡問題的基礎,締約國雙方向港人承諾,未來成立的特別行政區會享有"高度自治",實行"一國兩制","港人治港",現行的社會及經濟體系會保持不變,跨越一九九七年。

當年鄧小平設計以"一國兩制"作為解決香港問題的方案,並不是一個權宜之計。在中英正式就香港前途展開談判之前,鄧小平是親自與香港人進行多次討論,並派人進行實地調查的。多年來,特別在八九民運後,不少香港人對九七年後是否可以真正落實此十二大字的政策,抱着懷疑態度,所以他們有些人選擇離開,但我必須要指出的是自《聯合聲明》簽署和《基本法》於九一年頒布以後,中國的領導人已多次強調,九七年之後,香港將享有高度的自治權,除外交和國防事務由中央政府處理之外,香港的法律系統、現有生活方式等一切保持不變,特區可享有自己的行政和立法權,而且在《基本法》第二十二條,更清楚訂明,大陸各省及任何部門不得干預香港特別行政區的日常事務。至於"一國兩制",保持香港資本主義制度五十年不變,這些基本方針政策共有12條,亦已載入《中英聯合聲明》及《基本港》中作明確規定。

主席先生,對於這些在《聯合聲明》和《基本法》之中"白紙黑字"寫明的保證亦不相信,依然抱着一種"冥頑不靈"的心態去看前途的話,那麼無論中國政府說甚麼、寫甚麼、作出任何的保證也是徒然的。

主席先生,說句老實話,要真正落實將來特區港人治港,高度自治,香港市民不能單方面的要求中國政府,而自己卻"翹埋雙手"不予理會特區政府的籌組,這樣怎能實踐"港人治港"呢?他朝有日,假如出現"京人治

港"時,就不要只是抱怨。要邁出的第一步,是要我們的市民、香港人應該 積極參予和支持目前特區籌備委員會的工作。

眾所周知,成立籌委會是為籌備未來香港特別行政區工作的,而籌委會的宗旨是"面向港人,依靠港人"。在未來三百多天的日子裏,我可以肯定的是籌委會的工作將越來越繁重,要使這些工作能順利進行,不僅要靠來自各界的籌委會成員,香港市民的參予和支持是不可或缺的。負責選出第一屆特區行政長官和籌組臨時立法會的推選委員會,將於今年年底前產生,這是關乎九七年後特區政府的運作,作為香港市民,不論是任何界別,還是基層團體和組織,都應該積極參予,從速推選人才向籌委會提名。正所謂"齊心就事成",假如市民對籌委會工作不予支持,不向籌委會反映這方面意見,籌委會就無法廣泛吸納市民的意見,代表港人提出治港的政策,做到"港人治港"。

主席先生,事實上,六百多萬香港人當中,確實有人是生活在自己的 幻想世界之中的,對社會現實視若無睹。籌委會是根據九零年四月四日全國 人大決議成立,負責籌組第一屆特區政府的事宜。但我記起日前憲制事務委 員會會議上,就有民主黨議員指摘臨時立法會是違憲,更將負責籌組臨時立 法會的推選委員會,比喻為"策劃謀殺、打劫"的組織,這樣難以理喻的言 論只說明他們根本就不想按《聯合聲明》及《基本法》去籌組特區政府,實 現香港主權的回歸。既然他們強調要"港人治港"、要"高度自治",中國 政府提供了途徑,他們又不去參予、實踐,卻又回過頭來,要求中國政府要 全力落實一國兩制、港人治港、高度自治,這是怎樣的一套邏緝?

主席先生,根據梁耀忠議員的修正,民建聯認為梁議員應首先熟讀《基本法》,根據《基本法》第十九條及第一百五十八條,其實已清楚說明終審法院的權力,終審法院並不能擁有對《基本法》所有條文的解釋權,所以我們難以理解何故梁耀忠議員會提出這樣的措辭。

本人謹此陳辭。

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**MR DAVID CHU**: Mr Deputy, the Honourable Martin LEE's motion today has already been heard in this Council under several titles and seen in various guises since I became its Member in October. I wish to amend the motion today not because I disagree with the explicit sentiments expressed by Mr LEE. I am

ardently for "one country, two systems" and "Hong Kong people ruling Hong Kong with a high degree of autonomy". I am resolutely for the view that China should not interfere in Hong Kong's internal affairs. I am also totally for the safeguarding of democracy, the rule of law, human rights, freedom and our way of life.

Where I differ from Mr LEE and his associates is that I believe these noble aims can only be realized through co-operation, not confrontation, with China. Let us not mince with words. Some in this Council have made a political career out of pandering to the prejudices and paranoia of a certain segment of the public.

We have before us a stark and simple choice. We can, as elected leaders, guide our people forward into the new era in which they have a far greater say in their destiny than they ever had under colonial rule. We can do the opposite and induce them to retreat to the anxiety that was so evident prior to the signing of the Joint Declaration.

I am for the constructive rather than the destructive course. I am for the view of dealing with China based on mutual respect. I am against putting our community against each other and against our brothers and sisters across the border. I am against interference in the internal affairs of China so that the sovereign may reciprocate by not meddling in our business.

Let us not kid ourselves. China has the means to dominate Hong Kong, but it has opted to let us enjoy a high degree of autonomy because of our contribution to the motherland. The day we cease to be an asset and turn ourselves into a liability, there will be no treaty, no promise, no guarantee that can protect us. If you are not yet convinced, then look at the facts and at the striking contrast between the positive results of co-operation and the negative one of confrontation.

Through co-operation, we have managed to achieve:

The Joint Declaration

The Basic Law

The Court of Final Appeal to ensure the rule of law

The New Airport

The stability of the Civil Service

A more secure boundary

Repatriation of criminals

Return of stolen property

All the water we need

Staples at fair prices

Synchronized infrastructure development

Assurances for permanent residency

Legal reform in the Special Economic Zones to suit us

Our separate status in the World Trade Organization

Our right to sign separate aviation agreements

Joint effort to curb pollution

Chinese agreement to our sewage treatment plant

Academic exchanges

Cultural collaboration

Agreement in principle on port development

Military land for our commercial and residential use

Our defence costs covered by China

Agreement on flood control in the Shenzhen River basin

Future road links to Zhuhai

The list goes on and on. What in contrast have we attained through confrontation? The list is short, only one item:

# The provisional legislature

What Mr LEE seems to want from you is a vote of confidence in your own future. What I want from you is a vote of confidence in yourself and our community. The constant quarreling and nitpicking with China do not benefit Hong Kong. The tireless striving for a better tomorrow through co-operation, which is in our character, helps our whole society. I ask you not to rally to fighting words, but to overtures for peace and hope. Do not stagger to the barricade, but stride forth, with open minds, heads held high, to create a Hong Kong ruled by Hong Kong people with autonomy, freedom, rule of law and sanctity for our cherished way of life.

I appeal to you to support the amendments by the Honourable IP Kwok-him and myself. Remember, we have too much to do for our great city than to let fright oppress us and let those exploiters of uncertainty gain from that self-oppression. Peace is stronger than war, and co-operation is more fruitful than confrontation. This is the message of the United Nations, and it is a message pertinent to us in our final year of the transition and beyond.

Thank you, Mr Deputy.

# 梁耀忠議員致辭:

倒數回歸,各懷心事

代理主席先生,首先,我要回應葉國謙議員所說的問題,事實上我是不熟識《基本法》的,主要原因是我不承認一套沒有經過民主程序而制定的《基本法》,所以在過去以及未來,我都會爭取再制定一套經過民主程序而誕生的《基本法》。

代理主席先生,倒數回歸的日子越來越近,香港人對於九七回歸亦各懷心事,社會上彌漫着的絕對不是洗脫殖民統治耻辱所應有的喜悅!當然,歌舞昇平慶祝回歸的活動自然大有人攪,不過參與其中的人亦明白這些只不過是表態以示忠貞而已,而且,這些歌舞昇平的繁榮假象,事實上是不能夠帶給港人多少對回歸意義的反思。其實,現時的所謂親中陣營,除了過去被港英政府打壓的傳統左派人士外,還有不少是"看風駛裡"的牆頭草,他們根本不贊成回歸,不過礙於現實的政治現實,他們唯有"急急向左轉",甚至比傳統左派更左,目的只是想享用一些更加豐富的免費午餐。

另外,由於一直以來中國政府的高壓與專制,不少香港人十分害怕中國 干預香港事務,所以他們希望一切盡量不變便不變,而對於回歸只能感到無 奈。

民主回歸,港人治港

我相信,回歸中國的真正意義應該是積極而正面的。回歸,應該代表香港人不再受殖民統治,人民可以起來當家作主;回歸,亦是表示港人對自由、民主、人權等權利的全面確認;回歸,更代表了香港的的中國人可以堂堂正正參與建設全中國的發展與及民主進程!我認為,只有在這些前提下,

"一國兩制"、"港人治港"、"高度自治"才有其積極而現實的意義,而具體表現就是多年來我們一直爭取的"民主回歸";回歸中國,應該成為社會改革的動力而非阻力。"一國兩制"絕對不應該成為空洞的政治口號,而應該有明確而得到港人共識支持的內容才有意義,而這亦是我提出對李柱銘議員原議案作出修正的原因。

# 民主人權,必須爭取

當然,要全面落實"一國兩制""港人治港"以及"高度自治",內容可以是無窮無盡。今天我提出的修正,則包括了行政及立法單位要由全面民主的方式選舉產生、司法機構有獨立而全面的司法解釋權,以及港人的權利不會遭到不合符國際人權標準的法例或措施所剝奪。我認為,以上幾方面是體現民主、自由、人權、法治的根本。

### 普及平等,選舉基礎

《世界人權宣言》第21條第(3)款指出: "人民的意志是政府權力的基礎:這一意志應以定期的和真正的選舉予以表現,而選舉應依據普及和平等的投票權,並以不記名投票或相當的自由投票程序進行"。普及而平等、一人一票不等值的直接選舉制度,乃是《世界人權宣言》乃至於《國際人權公約》所確認國民所享有的基本人權;可惜,九七回歸後,這樣的基本權利卻遭到公然剝奪。《基本法》規定行政長官由800人大選舉團選出,第一屆立法會亦只得三分一議員由直選產生,全面直選遙遙無期;更為變本加厲的,是成立臨時立法會,全面由中方欽點未來特區立法機關成員。試問,這又如何令港人相信真正可以落實港人治港呢?

任何人、任何政府均有責任遵守國際認可的人權標準,故此,我重申要求特區行政長官及全體立法會議員均必須由一人一票、普及而平等的選舉產生,反對委任政治、反對愚民政策!

### 司法獨立,人權保障

我的修正案亦要求日後特區終審法院,在審理案件時對《基本法》所有條文,均應擁有解釋權,而非像現時《基本法》所規定,當解釋某些條文,要先得到人大常委的官方解釋。香港作為普通法司法體系,法院在審案時擁有對法律有全面的解釋權是非常重要的,否則便會影響司法機構的獨立性;

事實上,如果根據《基本法》規定,當終審庭在審案時如要解釋部分《基本法》條文,需要先得到人大常委的官方解釋,但人大常委考慮如何解釋卻沒有預先聽取案件訴訟雙方的意見,則可能會影響訴訟人士的權益。

另外,我亦十分關心日後可能引入香港的全國性法律,對港人人權的影響。例如駐軍法會否令日後駐港解放軍不用遵守本港法律,甚至乎解放軍權力過大,而影響香港人的人權;日後,中國政府會不會要求特區政府遞解一些被認為犯了"反革命罪"的港人回國受審,這亦是尚未澄清的問題。

代理主席先生,要落實真正的"民主回歸"、"一國兩制"、"高度自治"及"港人治港",除了要中國政府合作外,香港方面亦必須敢於起來捍衛我們的民主、法治、人權、自由,積極建設民主的香港及民主的中國。當家作主只能靠大家起來爭取!

代理主席先生,本人謹此陳辭。

張炳良議員致辭:代理主席先生,中國國務院港澳辦公室主任魯平在兩個星期前於訪問新加坡期間,曾經引述中國中央領導人較早前的一番講話說,中國的各省市及中央部門,在九七年後不要伸手到香港去,叫他們的手不要伸得那麼長。朱幼麟議員認為魯平之言已經是一國兩制的保證,但我們認為魯平所轉述的這番說話,卻正正引證了長期以來香港人在這一方面的擔憂,現在連中國的高層官員也十分清楚情況的嚴重性。這絕不是民主黨杞人憂天。

在九七年後,可能伸出來的手起碼有三種:

- (一) 無形之"手":我們憂慮,一些中央級的部門,處處聲言要體現一國兩制中之一國,動輒以行使中央權力或者國家主權為前提,對於香港的事務作出這樣或那樣的指示,對香港的內部施政構成壓力。
- (二) 利益為"手":一些國家或國有資本的機構,無論是來自中央或地方各省市的,都希望借助香港的金融地位,借助香港的投資優勢,以發展他們的利益。用江澤民先生的講話,就是"趕潮熱"。我們擔心,若果有一些內地人士或機構為了一己的方便和利益,沒有依照香港的法律和程序來辦事,反而用他們本身在國家體制內的權力或影響力來達致目標,這

樣就會造成香港被各方諸候進行利益瓜分的局面。

(三) 搵"手"突擊:這種手最可怕,因為這一種手不是單方面由中央或各省市方面伸出來的,而是一些香港人的手向北方伸上去,再把北方的手拉進來。一些香港的利益集團,可能為了要拉內地關係,在香港取得和擴大利益,不惜主動向北方招手,拉北方的手下來作後台,引兵入關,挾中央的手以令將來的特區政府。

代理主席先生,這三類的手會造成香港特別行政區"措手不及",應接不暇。最級的後果是將來香港特區政府失去決策自主的能力,唯"手"是瞻,無所適從,出現管治困難。魯平主任所轉述中央領導人的憂慮正是反映出中國的國情是:上有政策、下有對策。其實本港商界亦十分擔憂內地干預香港,例如較早前鄭家純先生最近就表示:以魯平主任的一雙手,怎可能有能力推開國內各地伸過來的十幾雙手呢?可況,將來的手可能還不止十多雙呢?

我們不反對內地與香港"握手",但反對"插手"。良性的互動,互相的補足,是香港與內地中央各省市的政府部門及企業接觸的應有之道,這樣亦會促進香港的經濟發展。但若果互動變成插手,接觸變成干預的話,那麼一國兩制中香港這一脆弱的一制,就只會不堪一擊。

如何處理這些可能伸出來的手?可以從三方面來看。首先,中國中央政府要率先尊重特區的自主性,除國防外交外,不對特區事務指指點點,切實執行落實一國兩制,港人治港及高度自治的政策方針。具體上,中央政府要責成地方及各部門,不要伸手到香港,並且以身作則,不濫用中央政府在《基本法》下的權力,例如《基本法》解釋權,對特區立法的審查等。從香港來看,總不能每一次都找中央權威人士來"打手板",要尋求干預的利益集團縮手。因為若果每一次都要依賴中央的"婆婆"來保護特區,這最終就與"京人治港"沒有分別,這並不是根本的解決方法。況且,假如伸進來的手是來自中央的時候,還有哪些手去擋它呢?

代理主席先生,捍衞一國兩制、高度自治、港人治港,香港人責無旁貸。首要是香港將來的特區行政長官以及立法會在九七年之後對任何干預之手要有堅決說"不"的勇氣,堅持事事按一國兩制的原則辦事,站穩港人的立場,據理力爭,不亢不卑。這並非如朱幼麟議員所講的對抗。在八十年代初期。我記得安子介先生曾經提過"港人治港",要做到"港法治港",就

是要求中央及地方各省市,亦包括港人,將來在香港特區,一切均按《基本法》以及香港的法律辦事,嚴守法治精神,不可以隨便"使橫手",或者通過一些在香港特區的附庸,在幕後做黑手,因為法治一旦失去,一國兩制就會完蛋。與此同時,港人亦應發揮自治的精神,在自治範圍內掌握主動,不要玩弄人治關係,拉上壓下,以外壓內,自己首先破壞香港的"一制"。唯有這樣,才能使一國兩制、高度自治和港人治港能夠多一些落實的機會。

代理主席先生,本人謹此陳辭,支持李柱銘議員的原議案。

廖成利議員致辭:代理主席先生,上天賦于600萬香港人一個歷史的"特殊機緣",要他們在未來的歲月,在一個中國歷史上未曾發生過的區內生活,親身去驗證"一國兩制、港人治港"的構想會否成功。全中國12億人之中,只有600萬個香港中國人擁有這個"特殊機緣";12億的中國人,我相信大部分都是羡慕香港人有這個"特殊機緣"的。

中國和香港都期待"一國兩制、港人治港"會成功。但是,如果我們只停留在期待的狀態是不足夠的。要"一國兩制、港人治港"成功,我們要以行動去加強積極的因素,以毅力去消除消極的因素。

#### 港人民主治港

第一,我們要齊心協力,爭取落實"港人治港"。對於"港人治港",中國和香港有不盡相同的理解,鄧小平說過"港人治港"的"港人",是指"愛國愛港的港人",這就導致了何謂"愛國愛港"的爭論,也引起了一些爭相表現自己才是真正的"愛國愛港"的現象。其實何謂"愛國愛港"是難於界定,也是每個人內心的狀態,難以互相比較,這些爭論也是無謂的。但是民協相信,香港人普遍理解的"港人治港",是指"港人民主治港",是指由我們香港人信任的人來治港,要找出香港人信任的"港人",最好的方法不是由北京欽點,也不是以表現得最"愛國愛港"來作為標準,而是要建立一個民主的政治制度,由香港人以自由民主的方式,選舉出受香港人信任的領袖,經過民主的授權來管治香港。

故此,若要使到香港人理解的"港人民主治港"成為事實,我們一定要 緊記一點,要爭取早日在香港建立一個由全民普選產生的民主政制。

#### 特區四權的捍衞

第二,我們要團結起來,捍衞特區政府享有的"四權"。《基本法》指明,除了國防外交之外,特區政府享有的"四權"包括獨立的行政權、立法權、司法權及終審權。中國和香港都應有一個共識,不要製造一些削弱上述四權的障礙。

### 行政權

要特區政府享有完整的行政權,就不應該在特區之上設立任何的"太上皇",對特區的內部行政指指點點。故此,民協建議,在九七之後,香港新華社的身分及功能需要改變,變回一個名符其實,只處理新聞通訊的組織。至於中國國務院港澳辦亦應只擔任特區與中央政府聯絡的角色,並負責協助防止各省市有任何干預特區"高度自治"的行為。

為確保特區有完整的行政權,行政長官應盡快在九七後以一人一票的方 式普選產生。

### 立法權

要特區的立法會享有完整的立法權,特區立法會應在九七後盡快由全面普選產生。在未能達成普選立法會前,我們要避免有任何破壞特區立法會立法權的安排。因此,民協是反對預委會的建議,由人大來干預香港的內部立法,例如還原因應《人權法》而修訂的法例。

### 司法權

為確保特區有完整的司法權,我們要爭取維持香港原有的司法獨立制度,包括法官由獨立的委員會所提名的制度,以及完善的法律制度。

#### 終審權

為確立一個符合《中英聯合聲明》及《基本法》的終審法院,民協會爭取在九七後修改《香港終審法院條例》,容許終審法院有權邀請一個以上普通法國家的大法官成為終審法院法官。

#### 人權

第三,我們要竭盡所能爭取九七後繼續享有《國際人權公約》所賦予的 人權保障。要達致這個目標,我們要關注《香港人權法案》的命運,特區立 法會不應無理修改《人權法》,也不應還原那些因應《人權法》而修改的法 例。中國政府雖然不是《國際人權公約》的簽署國,但既然《中英聯合聲明》 已在聯合國備案,而《基本法》第三十九條已確認兩條國際公約適用於香港 的有關規定繼續有效,並會通過特區法律予以實施,中國政府應容許及授權 香港特區,向聯合國人權委員會在九七後作出人權報告。

### 原有的生活方式

第四,我們要老中青、左中右上下一心,以行動、言論,爭取保持及繼續香港人原有的生活方式,包括政治立場多元化的空間,互相容忍的政治寬容文化,自由出入香港特區的權利,並且享有返回祖國的自由(無論九七前或後,在中國的土地上,都不應該有拒絕香港中國同胞返國的不合理現象)。

# 信任香港人

最後,我要強調,若要"一國兩制"成功,中國政府要信任香港人,要 真正按照《基本法》的安排,放權給香港特區政府,不要侵奪《基本法》已 經賦予香港人的政治權利,由香港人去實現"港人民主治港"。

未來的一年,是中國收回香港主權前最關鍵的一年,我們要做好準備。 作為立法局議員,我們要以行動去加強"一國兩制、港人治港"成功的有利 因素。

關於葉國謙議員的修正,由於它是關於籌委會的工作,民協原則上是支持的,所以也支持他的修正案。

本人謹此陳辭,支持原議案及葉國謙議員的修正案。

# THE PRESIDENT resumed the Chair.

**張文光議員致辭**:主席先生,我想回應葉國謙議員幾個質詢。第一,葉國謙議員說我們民主黨冥頑不靈,不相信白紙黑字的《中英聯合聲明》和《基本法》。

主席先生,我們曾經完全地擁護《聯合聲明》,我們甚至對《基本法》曾經抱着一絲的希望。但事實上,十年以來,《聯合聲明》和《基本法》所給予港人的,是白紙黑字不斷化為烏有。白紙黑字所允諾的很多很多的東西已經褪色。我們今天所看到的《中英聯合聲明》和《基本法》,是一本不斷倒退的《聯合聲明》和《基本法》,在這情況之下,又教人如何去相信呢?在這問題上,我想指出《中英聯合聲明》和《基本法》四個最重大的倒退。

第一個倒退是民主的倒退。我記得《中英聯合聲明》曾說過,立法機關是會由選舉產生的,但是將要到九七時,我們的立法機關,即是將會接手的臨時立法會,只不過由委任或者變相委任的400人去進行小圈子選舉產生。所有選舉的氣息已經蕩然無存。任何誠實的人,任何誠實去看《中英聯合聲明》的人,都會相信和明確指出,當時所允諾的選舉,如今已經一掃而空,剩下只是傀儡的選舉而已。

第二個倒退,是法治的倒退。在《聯合聲明》和《基本法》中所說的終審庭,有關"國家行為"的解釋,已經帶給香港司法制度一個社會主義的黑洞,這個黑洞沖擊了香港的司法制度,沖擊了香港最賴以珍貴的一個司法制度,再不是港法治港,而是在"國家行為"這問題上,以中國社會主義的法律治港。這個"國家行為"的問題,還可以透過《基本法》第二十三條給予香港人很多很多"顛覆"等的罪名,令我們的法制受到很大的沖擊。任何誠實地去看《聯合聲明》和《基本法》的人,都會看到這個倒退的。

第三個倒退,是自由的倒退。《基本法》第二十三條早已經用"顛覆"的名義,為自由劃定了一個不可超越的框框。即使魯平也曾經說:香港將來的新聞,不能夠鼓吹他視為兩個國的東西。這樣已經開始將我們的自由空間 越縮越窄。

第四個倒退,就是人權的倒退。預委會,甚至籌委會,信誓旦旦要將香港人曾經擁有過的《人權法》摧毀,要還原殖民地的惡法。讓香港人重新走回殖民地時代中失去了人權的歲月,或者沒有人權的歲月。任何誠實的人,都應看到這十年光景,我們的民主、自由、人權、法治是倒退到甚麼田地?這是九七前這十年來帶給香港人深深不可磨滅的陰影。在此情況之下,香港人根據他們曾經相信過的《中英聯合聲明》和《基本法》,進行有原則的爭持,這些爭持又怎能被貶斥為冥頑不靈呢?正因為我們曾經相信過這些白紙黑字,所以才為我們的權利去抗爭,所以才被視為冥頑不靈。這對香港人而言,是不是一個公道的說法?這對於十年來的歷史是不是公道的寫法?每一個人都應該問一問自己,尤其是當你作出這樣的指控時。

葉國謙議員說,香港人不要袖手旁觀,是對的。香港人正因為不袖手旁觀,才要維護自己曾經擁有過的,或者希望擁有的民主自由和人權法治,但結果又如何呢?結果就像朱幼麟議員所說,這些就是嘩眾取寵,或者挑撥煽動。嘩眾能取得甚麼寵呢?我們只不過是希望繼續堅持《基本法》和《聯合聲明》允諾給我們的東西,這能視為嘩眾嗎?視為取寵嗎?視為挑撥嗎?視為煽動嗎?這對於很多曾經對香港對中國有赤誠期望的人,亦是同樣不公道的說法。

各位朋友,香港人本來不想袖手旁觀,香港人本來想用手去投票的。但我們的票在那裏呢?九五年100萬人的票去了那裏?當我們的票被掠奪時,現在竟然叫我們袖手旁觀,是不對的。如果你給我投票,我相信香港人絕對會用手投下神聖的一票,作出選擇。至於說我們要齊心,齊心就事成,這是對的。但是,如果要大家去與籌委會齊心,而籌委會則不斷用各種的方法去剝奪香港人的民主、自由、人權和法治,又如何能團結起來,又如何能齊心起來呢?有誰願意齊心去閹割自己的權利呢?有誰願意齊心去支持一些公信力跌至低點,連預委也不如的籌委呢?公道的人,應該看到香港人的決定是清楚而明白。謝謝主席先生。

MRS ELIZABETH WONG: Mr President, I once believed, and believed very sincerely, in the concept of "one country, two systems". To me, at the time the concept of "one country, two systems" as defined by the Sino-British Joint Declaration and as stated in the Basic Law refers to a principle that, when China resumes the exercise of sovereignty over Hong Kong with effect from July 1997, the socialist system or socialistic system with Chinese characteristics and the Chinese associated policies will not be practised in Hong Kong.

Yet, I think to me, it is very sad to note that with only 369 days to go, I am less sure of the definition. I think this is because the term "one country" is understood by everybody, but the "two systems" has been stood on its head. Many people now say that the "two systems" actually refer to one political system, which was the system of 1985, before the 1995 reform. So, it is an old political system acceptable to China.

An economic system really should be separate from the political system. That is to say, you make as much money as you like provided you leave politics alone. And all this bickering, this taunting, this deliberate distortion and all these political antics like the introduction of a provisional legislature, all these

things do not assure me that the promises of yesteryear will happen tomorrow, in fact, next year. It would not even happen today, let alone next year.

So, I feel with a touch of sadness — in fact I did not even want to get up to speak for I was so emotionally upset — I think it is really with a touch of despair that I am saying that it is ironic that with these promises of "one country, two systems", patriotism, going back to the motherland, that we are beginning to talk like goose to ducks, chicken to ducks, if you like, but I think it is Hong Kong goose and the Beijing duck.

Now, I do not have the eloquence of many friends who spoke before me, but I think I want to have it put on record that we have seen over the last couple of years the gentle chipping away at the foundation of the Sino-British Joint Declaration and also at the concept of "one country, two systems". I still have a residual hope that by this time next year, I can stand up and say, "Look, things are not that bad. We might have some hope." But I am not very sure.

With that, I think I support the original motion because that, at least, has the clarity of interpretation to bring us back to the original understanding of the "one country, two systems" that I understood at the time of the ratification of the Joint Declaration. Thank you, Mr President.

何俊仁議員致辭:主席先生,中國政府當初向香港市民提出"一國兩制、高度自治、五十年不變"方針時,它的用意是穩定社會、安撫人心,但到了今天,這個"五十年不變"的口號,竟然成為了九七年後把香港"再殖民地化"的法理基礎,這些都是令人感到遺憾和憤慨的。

其實過渡期的改革,包括建立民主代議政制、成立終審庭、制定《人權法》、修訂香港法律,使之符合人權公約,這些都是為了落實《中英聯合聲明》。但中國政府以至香港的中方代言人,卻指這些改革是違反《中英聯合聲明》,還造成"十三年大變,五十年不變"。中方要成立臨時立法會,並假其手再修改法律,把香港的法制還原至八十年代或以前的殖民地模式,目的是要配合行政長官將來所要實行的獨裁和專權統治。被恢復的殖民地惡法,包括已公布了的《公安條例》、《社團條例》、《緊急情況規例條例》、電視、電訊廣播等六條和其他很多已在計劃中將會被刪改的條例,將不但會喪失了保障香港市民基本自由人權的效力,更會成為遏制和削奪人權自由的工具。

主席先生,更使人擔憂的,就是一貫以來對香港政府產生有效制衡作用 的司法機關,在九七年後的獨立審判權和獨立運作亦會受到《基本法》的一 些不合理的限制和不利的影響。

- (一) 特別行政區法庭在審理案件時缺乏了全面解釋《基本法》條文的權力,根據《基本法》第一百五十八條,涉及中央管理的事務或中央特區的條款的解釋,法庭在終審局判決前要請示人大常委。
- (二) 特區法庭對"國家行為"無管轄權,但何謂"國家行為",則由中央政府全權決定。根據《基本法》第十九條,"國家行為"不單包括國防、外交等行為,因為條文中加了一個"等"字。這個"等"字可以是無限制地擴展"國家行為"的字義,使"國家行為"可以變成達到《基本法》第二十三條的目的而去鎮壓異己,甚至是充公私產等的行為,並使這些不合法的所謂"國家行為"超越法庭的管轄和制裁。
- (三) 特區法庭是否享有對立法機關所制定的法律有司法覆核權(power of judicial review)亦將成疑問,因為中方對《人權法》的實施已清楚表示不滿,並指摘其對本港法律造成沖擊和不良影響。更有人指出《基本法》第三章所載的基本權利和義務,不是用作司法覆核立法的根據。

主席先生,我剛才提出的幾點問題,已使香港法律界和社會人士對九七年後香港的司法獨立運作和法治產生憂慮。其實健全和合理的法制、獨立和有效的司法制度,對香港市民人權的保障,對國際投資者信心的維繫是不可或缺的。

在一九八四年,其實香港早應實行這些改革,因為事實上英國在七六年早已簽署了兩項人權公約,並使之適用於香港,但一直遲遲都沒有作出相應的改革。現在中國政府在九七年以後,對我們在過渡期內所應該作出的改革,竟然完全還原、倒退,這是否會令回歸這項盛事蒙上一個最大的污點呢?

主席先生,為了一國兩制的成功,我們誠意要求中國政府全面檢討對香港所實施的政策,要肯定和誠意地尊重落實高度自治、建立一個民主制度、維護人權法治,並對《基本法》盡快作適當和合理的修訂。

修訂包括第一,要尊重法庭在行使司法審判權力時的權力具有完整性,並且運作時的獨立性受到維護。我所指的完整性,是我們要求法庭具有解釋全部《基本法》條文的權力,而無需在審訊過程中為了聽取人大常委意見而押後,從而令司法程序受到不必要的干預。我們亦要求"國家行為"的定義應該清楚界定為只是國防和外交範圍,並要很清楚肯定是有司法覆核權。

我們要求中國政府清楚肯定《人權法》的法律地位,以及在過渡期間一切所作出的合理法律改革。我們要求中國政府必須承諾簽署,或最低限度為適用於香港的條文而簽署兩項人權公約,並且承諾在九七年後繼續向人權委員會遞交報告。我們要求中國政府必須尊重《聯合聲明》,放棄成立臨時立法會,放棄對香港實行政治的控制,要建立一套中央與地方之間能夠產生制衡,而互相合作的制度上的關係,而並非人事的關係。兩個制度之間,須按法律和規矩辦事,而並非只倚靠人事和關係辦事。唯有這樣,我們才能減少和避免中央不必要、不合理以及任意對香港的干預。

主席先生,我謹此陳辭,支持李柱銘議員的原議案。

李鵬飛議員致辭:主席先生,我今天很細心聆聽本局各位議員的發言,有關這個題目,本局已經不是第一次進行辯論。

首先,我想談談 "一國兩制"的構思。想當初在八三、八四年的談判中,中國根本無需與英國談判關於收回香港的事情,中國可以等,等到九七年七月一日,英國便要自動撤退。那又為何會作出談判?為何要提出"一國兩制"?原因是中國政府知道中國的制度與香港的資本主義制度有分別,它承諾香港人會實行"一國兩制"、"港人治港"和"高度自治"。"高度自治"或有情心;對國政府將會成為香港人對將來沒有信心;對《基本法》沒有信心;對香港民主政制的發展(其實《基本法》已切自由、人權沒有信心;對香港民主政制的發展(其實《基本法》已有是及的)也沒有信心。為何會缺乏信心呢?當然,其中包含着歷史的原因。的)也沒有信心的就是彈劾臨時立法會的成立。然而,他們卻沒有提及的)也沒有信心的就是彈劾臨時立法會的成立。然而,他們卻沒有提及的,最沒有信心的就是彈劾臨時立法會的成立。然而,他們卻沒有提及何會有臨時立法會的出現,為何沒有了"直通車"。《基本法》的設計是希國政府是第一個表示"自己搞自己一套","你搞你的一套"的。當別人"搞自己一套"時,英國政府卻表示不贊成。

說到"白紙黑字",我相信本局很多議員都曾看過當日中英兩國外長經過多番努力後的協議。在草擬《基本法》時,起草委員會在廣州等,等的是英國外相的最後通知,怎樣設計有"直通車"。有關那七封信,評定誰強辭奪理,是沒有用的。最後,我們得到了今天的環境。

有議員說不反對,應該與中國握手,但並非伸手去干預。他們有否去握手呢?他們是否有誠意,誠心地與中國政府傾談;還是只說中國政府有如洪水猛獸,將會吞噬了香港,伸出手來干預香港的事務?我認為最終都是信或不信的問題。如果你們不信香港將來有法治,可享有《基本法》列出來的一切自由和人權,其實《基本法》也有提及民主政制的過程,這樣我們說甚麼也沒有作用,因為你們根本不信。如果你們認為香港這600萬人將來會享有一個法治的社會,就應該根據《基本法》來行事,應該認為《基本法》就是香港的憲法,是不可以隨便修改的。下星期便有議員提議要修改《基本法》。為何不應隨便修改《基本法》呢?因為有些人可能提議修改這方面的事,而另一些人也可能提議修改另一方面的事。然而,《基本法》是經過差不多五年時間,由很多香港人參與制定的,在仍未實行前,就說要作出修改。

因此,主席先生,我認為整個問題的辯論,是人們對香港的將來有否信心;對中國政府有否信心。有些人提出中國的某些省、市的人可能會來香港,伸出手作出干預或尋找利益,無論是經濟或其他方面的利益。我也認為出現這個情況的可能性十分高。香港是一個不同的社會,是一個經濟繁榮的社會,有些官員到港尋找利益,並非一件很奇怪的事。但你們不要忘記,香港是一個法治的社會,日後的香港特區政府是否容許這些官員尋找利益呢?香港日後的特區首長是一個維護香港利益的人,我認為他所承擔的責任是非常重大的。誰人可說這種情況不會發生?但我認為日後的特區政府對香港人必須有所承擔,他們有責任維護香港的利益。

因此,香港會否實行"一國兩制",抑或實行中國那套社會主義,若 是後者,就無須經歷這般長的時間,互相傾談、互相談判,達成一些大家都 接受的共識。中國政府是香港合作的夥伴,並不是與香港對立的對象。如果 中國政府是與香港對立對象的話,香港就會永無寧日了。

謝謝主席先生。

MISS MARGARET NG: Mr President, I would like to begin with the words of Andrei SAKHAROV, "Father" of the Soviet hydrogen bomb and Nobel Peace

Price winner. He said, in an interview in 1973:

"..... there is a need to create ideals even when you cannot see any way to achieve them, because if there are no ideals, then there can be no hope, and then one would be left completely in the dark, in a hopeless blind alley."

These words came to my mind as I pondered on today's motion proposed by the Honourable Martin LEE.

Mr President, in the 12 years since the Joint Declaration, people have divided speakers on Hong Kong into two categories: those who paint a rosy picture of the future, citing edifying parts of the Joint Declaration and the Basic Law, pledging faith in China and buttressing it with arguments on economic self-interest; and those who cast doubts on such a picture pointing out the cracks in the edifice, the breaches, the betrayals, the back-paddling and the shadows ahead.

The Honourable Martin LEE has been firmly put in the second category. By name or by description, he has been attacked for spreading "doom and gloom", and undermining the confidence in Hong Kong. I have no wish to defend him. It would be presumptuous of me to do so. Yet, looking at today's motion, I cannot help wondering, how can anyone other than an utter optimist propose such a thing? For, if we look back on those 12 years and sum up for today, can we say that our doubts on the implementation of "one country, two system" have diminished through the test of time? Or do we have to admit that our doubts have, instead, grown with every incident? Can we say that our conviction that Hong Kong will enjoy a high degree of autonomy has been strengthened by China's consistent attitude? Or do we have to admit that it is paling fast in the light of the common day? Do we see those institutions erected and reinforced for a true system of Hong Kong people ruling Hong Kong? Or do we see, more and more, that there are strings attached everywhere?

I fear the answer is all too obvious — not only to me and to many others, but must be so to Mr LEE. Yet, instead of declaring despair and defect, he, in

his motion, urges the Chinese Government to fully adhere to the principles of "one country, two system" and "Hong Kong people ruling Hong Kong with a high degree of autonomy". If this does not show indomitable optimism, I do not know what does.

Mr President, Mr LEE invites this Council to appeal to Hong Kong people to safeguard democracy, the rule of law, human rights, freedom and our way of life. I join him in his appeal. This is a lot to ask of a community which is tiny and which, up till almost yesterday, was supposed to have remained politically apathetic under a paternalist system of government. But I believe in the people of Hong Kong — and indeed we have turned out to be the most reliable of the people we have turned to.

We may not have been saints or heroes, but in the past 12 years, we have time and again risen to the occasion, surprising not only the world but also ourselves. In the face of threats, millions of us had marched in support of the democratic movement in China; annual vigils have persisted to commemorate 4 June; millions of us have voted at elections, and so by action supported our developing democracy. A majority have voted for democratic candidates and for people who are not afraid to speak out. When the Bill of Rights was attacked, instantly and in overwhelming numbers, the people of Hong Kong hit back in defence.

The people of Hong Kong have proved the one factor for which our faith have grown with ample justification. We appeal to them because there is no one else we can appeal to with greater confidence.

Yet, Mr President, I would be less than honest if I were to claim that the courage and resolution of the people of Hong Kong is sufficient for Hong Kong's way of life to be assured. I agree that pitching the strength of the Hong Kong people against the determination of China is, as the proverb goes, "raising a grasshopper's arm against a wagon". The one thing which can truly guarantee Hong Kong's future is China's self-restraint.

In the concept of the self-restraint of the executive lies the foundation of the rule of law. The self-restraint of the Chinese authorities is the key to making "one country, two systems" possible. That is why, Mr President, I support the motion wholeheartedly in urging the Chinese Government to refrain from interfering in Hong Kong's internal affairs. The provisions are all there, in the Joint Declaration and the Basic Law. What we want to see is the commitment, the resolution to refrain from interfering, even out of good intention, and to hold back anyone who may try to interfere.

Of course, I support the Honourable LEUNG Yiu-chung's emphasis on the integrity of the court's power of constitutional interpretation, and his call for a totally elected government, executive and legislature. But these will be the natural consequences if the aspirations in the original motion are achieved.

Mr President, things may not look terribly rosy; the odds may be against us, but having assessed the situation as realists, we may yet keep our ideals. SAKHAROV insisted that we need ideals even when we cannot see any way to achieve them. Our situation is far less bleak than his. There is even more reason for us to be tenacious about our ideals, and to have stronger hopes of achieving them.

Thank you, Mr President.

黃震遐議員致辭:主席先生,各位官方喉舌慣例是報喜不報憂。今晚葉國謙議員和李鵬飛議員已為"一國一制"先行了一步,叫我們以信心來遮蓋着雙眼,便可跨過一切的困難和危險。可惜只有在"大躍進"的神話中才會找到這樣的結果。

香港經濟的優點是公平競爭、廉潔及以私營機構為主的市場機制,但近期中國航空與國泰航空的股份交易,就令本港與海外投資者擔憂,香港公平競爭的環境已開始褪色。我在此會就香港的經濟問題來討論"一國兩制"要面對的困難。

在此,我先就太古與中航的交易,提出三點疑慮。首先,香港航空市場原是由英資企業所壟斷,可惜監管航空事務的中國民航局非但沒有促進公平競爭,反而"明刀明槍,擺明車馬",進一步鞏固航空行業的壟斷地位,並從中分享豐厚的利潤。其次,民航局屬下的中航,以低於市價的金額購入港龍股權,令人擔心中國官員是否以政治壓力取得優惠,而航空市場會否只是頭炮,其他公共事業如電訊、基建,亦可能會是他們的獵物?第三,中航入

股後,成為最大股東,那麼港龍跟國有航空公司無甚分別,並從此改變了香港航空市場由私人機構營辦的局面。香港企業會否逐步被中國國營企業所鯨吞?自由、競爭與私營企業為主的市場機制會否逐步消失,被國企為主的經濟所取代?對於這些可能性,我們絕對不能掉以輕心。

主席先生,廉潔的商業操守是香港寶貴的資產,而特權是貪污的溫床。 在沒有民主的黑夜中,"不識時務"就是廉潔的代號。貪污腐化增加,企業 的經營成本也會相應增加,商業實力亦再非取勝之道,必須靠走後門、拉關 係,甚至賄賂等技倆,以求生存。如此一來,將會徹底摧毀香港既有的公平 競爭優勢,香港國際商業中心的地位亦會毀於一旦。因此,香港人必須同心 協力,爭取民主,以維護香港公平競爭與廉潔的商業環境。

主席先生,香港經濟發展是內政事務,應由現政府與未來特區政府處 理,以實現"港人治港、高度自治"的承諾。可惜,中國中央政府官員現在 已違背了小平同志的承諾,插手干預香港的經濟事務,最明顯不過的例子, 便是九七至九八年度財政預算案編制與基建設施。中英雙方於本周一達成共 識,就是雙方每月舉行一次會議,就財政預算案的重要收支及其他重要問題 達成一致意見後,才再進入相應的編制程序。民主黨一再強調,這種做法是 違背《中英聯合聲明》與《基本法》的。我們認為,現政府與特區政府候任 班底,應共同制訂一份為期12個月的完整過渡期財政預算案,而中英聯合聯 絡小組屬下的專家小組在每月召開的會議中,只有諮詢權,而非擁有決策 權,而該會議絕不應是制訂財政預算案的機制,亦不必在每一個項目獲得共 識後,才可開展下一個項目的討論。如果今次財政預算案的制訂都必須獲得 中央政府專家小組同意,那麼,主席先生,香港日後的財政預算案縮成中國 財政預算案的一小段落,已經是指日可待!此外,專家小組成員包括多名香 港工商界人士,但該等成員卻在無需申報利益、沒有監察的機制下,參與制 訂影響香港經濟長遠發展的財政預算案,利益衝突尤為明顯,亦令香港公平 競爭的環境大打折扣。

同樣,興建九號貨櫃碼頭是香港境內必需的建設,應由現政府決定與審批,與中國中央政府無關。然而,中國政府卻多番阻撓,拖延多年,令貨櫃碼頭不能興建。財團在中方撐腰之下,遲遲不願和衷合作,早日動工;香港政府亦嚇破了膽,不設期限,任由碼頭工程無限期拖延。中央官員這種粗暴干預香港經濟事務的手法,不單止打擊港人信心,亦嚴重阻礙香港貨運業的發展,令九七年後香港經濟的發展蒙上陰影。

最後,我想強調一點,就是香港經濟發展的需要與經營環境,是完完全 全的內部事務,現政府與未來特區政府應以"高度自治"作原則,進行管理

與政策制訂,中央政府不必要亦絕對不應該過問與干預。若非如此,香港未來的經濟發展,只會淪為中國經濟計劃的一粒棋子,香港目前的相對優勢和特點將會化為烏有,"一國兩制"亦名存實亡,無法實現。

任善寧議員致辭:主席先生, "一國兩制"是一個政治理想,它隱含了一個 地區與宗主國統一的條件尚未成熟時的一個權宜手法。政治理想與權宜手 法,其實是兩個極端,所以"一國兩制",是真正活學活用共產主義的"矛 盾統一"論;"一國兩制"同時也隱喻了一制比另一制優越,否則,宗主國 的制度早就應該凌駕地區上的制度,所以這是另一個矛盾。而這個矛盾,最 後也是要統一的。這種"先統一,然後再化解矛盾"的做法,台灣是不接受 的,但香港人被迫要接受。而我們只好假設"一國兩制"的理論是可行的, 而要求中方全力落實去做,但可惜中方信誓旦旦說要在九七後實施"一國兩 制",但在九七前,它已表現出"一國一制"的做事方式。最明顯的,就是 "一言堂",還有"一握手"決定最佳行政首長候選人,所以香港人擔心現 有生活方式難以保持。如果香港人完全不作聲,則中方便會不自覺地將內地 的一套加於香港,香港人不同的意見越多,則中方檢討的機會越多,而作出 修正的地方也越多,所以港人定要捍衞目前的生活方式。古時有所謂"禮、 義、廉、耻"國之四維,今天時代已變,港之四維,是"民主、法治、人 權、自由",無此四維,香港已不再是香港,"一國兩制"便會成為一個失 敗的實驗。

葉國謙議員似乎將"落實一國兩制"的責任放在香港人的身上,但其實決定性的因素在於中方,希望葉議員能向中方進言,同時也希望朱幼麟議員不時提醒中方的中央人員,哪些做法是違背港人"高度自治"的原則。

主席先生,本人謹此陳辭,支持原議案及梁耀忠議員的修正案。

鄭家富議員致辭:主席先生, "一國兩制"的概念,由八四年一直說到今天,由《聯合聲明》到《基本法》,似乎已經把"一國兩制"的概念,用條約和法律寫下來。不過,我們還未看到"一國兩制"在九七年後如何落實,我們卻先看到預委會還原惡法的建議,以及徹徹底底違反《基本法》的臨時立法會,正在密鑼緊鼓地成立。我們更看到、聽到中國政府的官員,正為香港市民一直以來享有的權利,劃下一道又一道的"緊箍罩"。

就以新聞自由為例,較早前港澳辦主任魯平,就"客觀報道"與"鼓吹"談論新聞自由,例如指出只要不鼓吹兩個中國,報界仍可自由報道。這

種在"言論上要求統一口徑"的做法,實在令新聞工作者和香港市民感到不安。魯平主任這番說話,始終未有向公眾交待"鼓吹"和"客觀報道"的明確界定意義,實在令人對本港的言論及新聞自由不感樂觀。稍後其他中方官員又指出,新聞自由必然要受法例所規限,而《基本法》第二十三條關於禁止叛國、分裂國家和顛覆中央政府的條文,正好是規範新聞自由的框框。新聞自由、言論自由需要受法例約制,這點沒有人會置疑,但這些法例不應是"惡法"、這些法制不應是"不合理",所以我們要堅決反對和修改這些惡法和不合理的法例!

魯平主任曾談及"客觀報道"和"鼓吹"的問題。現時本港並沒有"鼓吹"這個法律概念,而比較接近的概念則為"煽動"。根據香港的法律,"煽動"屬刑事罪行,而有關叛國及煽動叛亂的罪行,在香港法例第200章《刑事罪行條例》中已列明。不過,主席先生,條文中對叛國和叛國行為,及煽動叛亂的定義卻非常廣泛,極易被人濫用,及成為堵塞及阻嚇言論自由、新聞自由的工具。

主席先生,根據《基本法》第二十三條的規定,九七年後特區政府應自行立法禁止任何叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密的行為。但魯平主任的言論,其實是為未來特區臨時立法會或第一屆立法會訂下基本指令,任何不利國家主權的報道及言論,不論是何等客觀,都有可能觸犯《基本法》第二十三條的規定,或未來特區政府的"惡法"所不容,繼而被"莫須有"定罪。

事實上,外國其他地方,言論自由的尺度十分寬鬆;美國報界可報道有關夏威夷獨立於美國政府的新聞,甚至加拿大的報章亦可報道和評論魁北克獨立於加拿大政府的新聞,該類報道亦沒有被當地政府列為顛覆國家或鼓吹獨立的行為。根據《普通法》精神,只有煽動別人採取暴力來反對現政權,才是違法的。至於在中國,情況則不同,在一黨專政的政策下,政府在言論上要求"一言堂",對傳媒採取控制的態度,對國內新聞從業員嚴加控制;換言之,一黨專政下的傳媒政策,必然與新聞自由的大原則互相排斥,水火不能共容。未來的特區政府如果不能做到真正的"一國兩制"、"港人治港",我們未來的新聞自由亦將會在"一黨專政"的陰影下,暮氣沉沉。

主席先生,本港的新聞從業員,本身應具有捍衞新聞自由的責任,他們 應負責將社會的實況向大眾報道,令不同社會人士了解事實的真相。我們認 為,任何報道和評論,只要不導致社會發生危險情況,均不應被禁。因此, 身為新聞工作者,不應因九七臨近或受中方官員的言論阻嚇,而趨炎附勢或 進行自我審查,否則,便違背了新聞工作者的責任。作為立法者,我們的責 任在於對惡法提出反對的聲音,爭取合理的法例框架,讓港人呼吸言論及新聞自由的空氣。

主席先生,由於國內的新聞及言論自由的準則與香港不同,加上中國政府制定的政策或法律,只是形同虛設。中方官員可隨意"講一套、做一套",令人無所適從。我悲觀地預測日後本港的新聞從業員,在報道和評論有關一黨專政的問題上,可能屬違法的行為,因而被定罪。

主席先生,中方官員完全罔顧新聞自由的精神,意圖剝奪我們香港未來的新聞知情權,藉此將一黨專政的政策及處事的方法,由北京帶來我們未來的特區。因此,港人為了維護及保障未來的自由言論,必須向中方強烈反映,務必在未來特區能落實"港人治港"的政策。

主席先生,本人謹此陳辭,支持議案。

**DR SAMUEL WONG**: Mr President, is it "one country, two systems" or "one country, three systems"?

Indeed, how often do we look at the *cliches* so common in our society today and ask what they really mean?

Hong Kong has operated under the principle of "one country, two systems" for 150 years. That is to say policies such as military preparedness, high taxation, socialism, welfare state and so on, so dear to our sovereign power, have not been practised here. More recently, Hong Kong has become "one country, three systems" as it has joined the network of overseas Chinese, interacting with the other major centres in Los Angeles, Vancouver, London, Taiwan and so on, in a way in which its sovereign power has had no part.

So when we ask if the principle of "one country, two systems" will continue to be adhered to, we ask the question: Will our position as part of the overseas Chinese network remain the same or will we become so much a part of China, where foreign policy is not within our autonomy, that our links with the overseas Chinese network will have to change? In short, has the third system been given enough thought?

Similar scrutiny needs to be applied to the term "interference". When our present sovereign power imposed on us its style of democracy, did we regard it as

"interference" or was it rather simply an extension of the western culture we had grown up with? And this is the point. We now have a culture of our own. It is not synonymous with British, nor with Chinese culture.

Nowhere was this more evident than in the case of the New Airport. Hong Kong had a culture in which large engineering projects were handled in a particular Hong Kong way, which traditionally resulted in even the most massive projects being completed ahead of schedule and within budget. Amongst other things, it often relied upon the ability of our professionals to solve problems as we went along. The Chinese have a different approach to large engineering projects, so when the airport project was presented to them, it had to be delayed and the target date extended. The project will not be completed to the original schedule, nor within the original budget.

Now was this "interference"? I think not. The Chinese very rightly adopted a protective attitude to ensure the Special Administrative Region (SAR) was not committed to excessive expenditure. So more problems had to be resolved initially. This is their culture. It is sad that the result is the opposite of that intended, namely, the project is delayed and the SAR will be committed to more expenditure than originally budgeted. But it was based on understandable provision of safeguards and not, I suggest, "interference". I do hope some lessons have been learned for the Western Corridor Railway.

The moral of this analysis is that much more time has to be spent by both sides learning each other's culture and how to integrate our differences. Hong Kong's promised "high degree of autonomy" certainly implies that our professional culture should remain intact, yet we need to appreciate Chinese concern for the SAR welfare and they need to understand the culture that has made Hong Kong such an outstanding success and to encourage us to retain it.

To encourage is positive. But it need not be "interference".

Let me give another example — government attitude towards high technology. The Chinese Government is quite good in this respect. Two of the three executives who head the country were trained as engineers and the other is a professional. Enormous efforts are being made by the Government to catch up in technology, to enhance the telecommunications network, to upgrade industry and to learn from the most advanced countries — even Hong Kong.

This has never been the case in Hong Kong. Our position in the world of high tech is entirely due to the efforts of the private sector. It has taken decades of lobbying by professionals to get the Government to introduce protection of data, to establish Electronic Data Interchange and put effort into high tech support for industry such as a Science Park. We have still not succeeded in convincing them of the importance of giving adequate administrative training to technologists in the Civil Service, so they can make decisions within the Government without the eternal and expensive trouping off to consultants for opinion — and so they can tell when that opinion is flawed.

Only recently, a government-sponsored consultancy cost \$2.67 million and reported that one of the options would cost \$165 million to provide in Hong Kong — when the option concerned already existed here, waiting to be used. These highly paid consultants had not bothered to find out. It was the private sector that did so.

I hope that our new sovereign power will encourage the SAR Government to keep more abreast of technology — not to "interfere" but to give encouragement.

I therefore give qualified support to the motion. We expect a high degree of autonomy without interference, but we should also expect understanding and encouragement. Let us not word our approaches to China in a way that will undermine these.

Mr President, with these remarks, I support the motion as to be amended by the Honourable IP Kwok-him.

MISS CHRISTINE LOH: Mr President, the Honourable Martin LEE has proposed a perfectly clear motion which I fully endorse. It is hard to quarrel with any part of the motion. Mr LEE urges the Chinese Government to abide by the promises that have been made to Hong Kong, and also asks Hong Kong people to do their bit to maintain their way of life.

Mr LEE is perfectly right in putting emphasis both on China and on Hong Kong. The Chinese Government must give the Hong Kong system enough

leg-room for Hong Kong people to enjoy their current lifestyle. When the two systems conflict, China should try to understand the values that underpin Hong Kong's system and not impose its values instead. On the other hand, Hong Kong people themselves must have the self-confidence to take on the responsibility of autonomy by using each, every and all available channels to explain and press home to China the values that underpin their society, and their way of doing things.

If the "one country, two systems" policy is to work, then the people of Hong Kong need to see that when the two systems conflict that resolution can be based on open and honest dialogue between Hong Kong and China. Let us take two examples to illustrate areas of conflict that are worrying people here. I know that my colleagues have alluded to some of them, if I may be permitted to put my start on those two examples as well.

Firstly, there is the unending and unhappy problem of the provisional legislature. Hong Kong's legal circles are arguing that the provisional body, as currently envisaged by China, would not have proper legal basis according to the way Hong Kong is used to interpreting constitutions and laws. China supporters argue that according to Chinese legal thinking, the body will have proper constitutional basis. Both Hong Kong and China may be right in their own contexts. This illustrates a case of conflict because the concept of law is so different in the two systems.

Secondly, there is the much talked about CNN interview of the Director of the Hong Kong and Macau Affairs Office where he was asked about China's view of freedom of expression. His remarks about China's policy of "no two Chinas" sparked concern here that Hong Kong's freedoms could be curtailed after 1997. Again, we see a case of conflict between the two systems. The Chinese Government regards certain official policies as absolute and does not tolerate public dissent. In Hong Kong, people are used to speaking up against government policies, indeed, we are used to taking open and visible actions to press for changes.

In both examples, China may have real difficulties understanding and accepting Hong Kong's ways of doing things. However, its Government is

committed to try very, very hard because of its policy of allowing a second, and fundamentally different, system to flourish within one country. China must show generous flexibility, otherwise what chances has the smaller second system got, to survive in the shadow of the mighty People's Republic?

Whilst we ask China to accept our way of life and not interfere, Hong Kong people too must play their part. They must be prepared, collectively, to explain and assert their system. There is no point in concluding that Hong Kong will enjoy less freedoms after 1997 and thereby debilitate ourselves in its defence. If we become resigned to a less free life, and not continue to exercise our freedoms, then we will have less freedom.

It is for this reason that I cannot support the Honourable IP Kwok-him's amendment, the purpose of which is to ask us to support the work of the Preparatory Committee. Well, we might be prepared to support its work if we can see that the Committee is actively trying to address and resolve areas of conflict between the two systems. Instead, so far, what we see is that the Committee seems to find it easier to adopt China's values and way of doing things, rather than assert and explain Hong Kong's ways. Hopes bring eternity. I hope that the Members of this Council who are also members of the Preparatory Committee will assert themselves more and explain and assert Hong Kong's values and ways of doing things.

I also cannot support the Honourable David CHU's amendment. Of course, we are pleased that the Chinese Government will ensure that central government departments and provincial governments will be prohibited from interfering in Hong Kong's internal affairs after 1997. However, that is not quite the point of Mr LEE's debate today, so let us not get too diverted from the subject at hand.

Mr President, as for the Honourable LEUNG Yiu-chung's amendment, I do have the greatest sympathy for it, but I wonder why it is necessary at all. Surely, Mr LEE's motion allows Mr LEUNG to include the various points he wants to make without going for an amendment which, as it stands, is somewhat of a dog's dinner in the way it is worded.

It would be helpful if Mr LEUNG can better phrase his amendment to state more clearly what he is asking us to endorse. Is he implying that the Basic Law should be amended so that the Court of Final Appeal should have the final right to interpret the Basic Law itself, or might Mr LEUNG be referring to some specific sections, like the contentious reference to "acts of state"?

As to the second limb of the amendment, is Mr LEUNG implying that the Chief Executive and legislators should all be directly elected by universal suffrage? Further, it seems that Mr LEUNG is saying that Chinese national laws applying to Hong Kong should be interpreted with reference to international human rights standards where relevant. If that is his intention, this is a new and interesting idea which should be explored.

Whilst Mr LEUNG has explained his amendment in his speech, I wished the amendment is more clearly worded so that I do not need to second-guess what it is trying to say. I feel strongly that legislators should not have to guess the meaning of any amendment put to us.

Finally, I would have preferred that the word "indiscriminately" was dropped from the amendment. China should not interfere at all except in foreign relations and national security, whether discriminately or indiscriminately.

Mr President, with the above reservations, I am prepared to support Mr LEUNG's amendment to Mr LEE's motion.

**顏錦全議員致辭**:主席先生,孔子有云: "知者不惑,仁者不憂,勇者不懼",在香港回歸祖國最後這三百多天中,我們更應該以不惑、不憂、不懼的積極態度,確保特別行政區的順利建立,以達致香港的平穩過渡。

《中英聯合聲明》是中英兩國政府就"港人治港"和香港高度自治作出的承諾,而《基本法》的訂定則體現了《中英聯合聲明》的精神,所以要平穩過渡,就要以《中英聯合聲明》和《基本法》為依據。

《中英聯合聲明》規定香港特別行政區享有高度自治權,這主要是指除國防和外交事務屬於中央人民政府管理之外,香港特別行政區享有行政管理權、立法權、獨立的司法權和終審權。《中英聯合聲明》在一九八四年十二月十九日正式簽署,之後又根據《聯合國憲章》第102條的規定,在聯合國登記,向全世界公布,中國政府因此就香港的高度自治,向全世界作了莊嚴的

## 立法局 一 一九九六年六月二十六日

承諾,中國政府負有履行的責任。這十二年來,中國政府對信守《聯合聲明》的堅持,大家是有目共睹的。而《基本法》這份未來特區憲制性文件,更具體地對香港高度自治的權限作了明確的規定,進一步落實"一國兩制"、"港人治港"及"高度自治"的理念。《基本法》是一項全國性法律,對全國各省、市均有約束效力,從而避免香港的高度自治權受到侵犯。

《基本法》的制定歷時五年,是經過香港各界公開和全面的諮詢後反覆 磋商而成。《基本法》承繼了《中英聯合聲明》的精神,展現未來"港人治 港、高度自治"的藍圖,因此必須受到尊重、維護和落實。

主席先生,李柱銘議員的原議案卻脫離《中英聯合聲明》和《基本法》,自行解釋"一國兩制"。說話倒還是漂亮,但卻有如海市蜃樓,未免太過虛幻,這對促進香港的平穩過渡根本沒有任何積極的意義。而且,這在港人和中國政府之間刻意製造了互不信任的氣氛,實在不利於未來香港特別行政區的順利建立。

"人之易其言也,無責耳矣",這句話的意思是:有些人講話很輕率,原因在於他們不承擔甚麼責任。在這後過渡期中,一些人口口聲聲要港人治港,但另一方面卻對中國政府保障香港高度自治的莊嚴承諾置若罔聞,對《中英聯合聲明》、對《基本法》漠視不理,或妄加詮釋。這種逞口舌之快的態度,對香港的平穩過渡根本毫無建設性。這些人樂於"做show"、樂於"唱衰香港",實在不是港人之福。

"一國兩制"、"港人治港"和"高度自治"這些目標能否得到實現, 有賴於全體香港市民共同維護《中英聯合聲明》和《基本法》,依法守法, 通過保護法律所賦予的權利和規定的程序,從而促進香港的民主和自由。

主席先生,本人謹此陳辭,支持葉國謙議員的修正案。

羅祥國議員致辭:主席先生,香港在回歸中國的最後階段,不少香港人對中國未來對香港的施政仍有憂慮。現時,中國政府對香港的干預,有直接的,也有間接的。對於直接的干預,香港人的警覺性可算很高,亦勇於表達意見,但一些間接性的干預,則是較為隱晦,亦用迂迴的形式出現。

本人認為中國政府應堅守"一國兩制",各部門亦須克制,並有意識地防止這類干預香港的行為。以下我會列舉兩個具體的例子,要求中國政府關注,並能盡快改善有關的情況。

根據五月二十一日本地一份報章報道,《深圳特區時報》刊登了中國人

民銀行政策研究部一名博士的文章,記載自從一九八二年來,國家對深圳特區在港幣的流通及使用上已採用了特殊的政策。這自然為最終實現人民幣和港幣在兩地同時流通創造條件。他更指出,在香港回歸後,港幣在深圳的流通政策不會改變。他更認為深圳應率先作出主動,應盡快制訂如何令兩地貨幣相互流通的政策。

這份政策性文章令我非常不安,這顯示中國中央銀行有官員公開鼓吹政府在九七年干預香港的貨幣制度。這是清楚違反了《基本法》的第二十二條、第一百十一條及一百一十一條。

第二個例子就是近期國泰和港龍股權變動的事件,中國國家級的企業、中信和中航已加強對香港兩間航空公司的控制權。這些隸屬中國國務院的企業,近年已大大加強參與香港的航空業、貨櫃碼頭業、航運業、電訊業及其他基礎建設設施。中國國家級的企業,投資在這些龐大盈利的專利性香港行業,當然有其商業性策略的一面,但其政治性策略的一面,亦是非常清楚的。

香港需要繼續改善我們自由競爭的經濟環境,我絕不希望見到香港會由 一個被"英國私人壟斷資本"所控制的經濟體系,轉為由"中國國家壟斷資 本"所控制。香港的市民和國際投資者都極不願意見到這個發展。

中國國家級企業投資在香港有專利性企業,這是得到香港政府的同意。在本月二十四日本局經濟事務委員會會議中,政府就國泰和港龍股權變動事件提交了一份文件,其中第九段指出: "中航集團成為港龍的正式股東,令香港航空業更加穩定和有持續發展"。這個是國泰的立場,但報告也顯示香港政府是同意的。這句話反面的意思令我非常震驚,就是"如果中航不參與港龍,香港航空業就不穩定,亦不能有蓬勃發展。"

本人要求香港政府和中國政府,對此事作出詳細解釋,為甚麼要有中航 的參與才可以使香港航空業更穩定?

最後,本人提醒中國政府在九七年後,特別要切實執行《基本法》第二十二條: "中央人民政府所屬各部門、各省、自治區、直轄市均不得干預香港特別行政區根據本法自行管理的事務"。 "一國兩制"是一個偉大的構想,是中國歷史上未試過的實驗。我認為每一個香港人都要有耐性給它一個機會,每一個人亦應該盡我們一己本分和力量,使它得以成功。

本人謹此陳辭,支持李柱銘議員的原議案和葉國謙議員的修正案。多

謝。

羅叔清議員致辭:主席先生,當我們今天在立法局這裏辯論"落實一國兩制"的議案的時候,值得回顧一段十多年前的歷史。於七十年代英國感受到他們租借九龍新界期限將屆滿,其殖民管治日益面臨困難,於是不斷試探中國解決香港前途問題的立場與態度。於七九年三月,鄧小平已向當時訪華的總督麥理浩闡述了中國政府的方針,表示中國將採取"一國兩制"的方針,表示中國將採取"一國兩制"的方針,表示中國將採取"一國兩制"的方針,表示中國將採取"一國兩制"的方針,根據中國領導層經過深思力,是為了解決歷史遺留下來的問題,使中國完成統一大業,也配合國內改革開放的國策。這個方針並非英國於一九八二年,中英談判時討價還價得來的。事實上,當時不單止英國,包括國際社會及本港各界均不少質疑其可行性。經過十多年的過渡期,今天越來越多人相信,根據這個"一國兩制"的方針,香港是可以平穩過渡,繼續保持繁榮安定。目前,臨近九七只有三百多天,港人信心不單止沒有動搖,反而日漸加強。這個事實連反華反共的大士,也不得不承認。

要貫徹落實 "一國兩制",香港就必須實行 "高度自治"。誰來管治香港呢?中國領導層充分了解到,長期社會主義制度下培養出來的國內幹部,不可能應付資本主義制度下香港的運作,否則,便會扼殺了香港的前途,也不利國內的發展;當然也不能繼續由英國或其代理人管治香港。雖然英國及其代理人有這種夢想,因而提出了以 "主權換取治權",但這是不符合國家民族利益的一廂情願的想法,早就被中國拒絕了。剩下的就是只有"港人治港"一途,而這個才是最理想的方針。

由於中方針對香港平穩過渡的政策實施得宜,本港過去十多年來,並沒有發生過甚麼大混亂。每年雖有數萬人移民海外,但從來沒有發生甚麼所謂"投奔怒海"的難民潮。縱觀香港數十年來人口流動紀錄,每年數萬人的移民數目,對香港這樣一個開放城市而言,實屬正常,而且近年回流的移民倒是不少。過去十多年來,本港港元穩定,經濟沒有出現大幅波動。托國內開放政策之福,本港一直避過這後過渡期間,國際經濟數度不景氣的影響,令本港經濟每年有穩定的增長,民生基本上日漸改善,民心更趨安穩。

居安思危,我們不能不留意一些不穩定的因素。我們不能忽視香港有一少撮別有用心的勢力去製造混亂,以達到其不可告人的目的。很明顯,香港最少存在着下列三方面誘因:一、殖民統治者為了繼續維持其在九七年後,在本港的政治、經濟利益,或會造成一些混亂或埋下一些不穩定因素,以便與中國討價還價或有利於培植他們的代理人,延續他們的統治。二、以

中國為主要對手的美國,不會放過每一個與中國角力的機會。"香港牌"確實是一張好使好用的皇牌。三、傾向台獨的台灣當局,或會與香港志同道合的勢力互相呼應,鼓吹香港成為一個獨立的政治實體。

這些勢力不一定會赤裸裸自行走到角力台前,他們往往會找一些代理人,披着所謂"民主捍衞者"、"人權鬥士"、"愛國主義者"的外衣,提出一些冠冕堂皇或大義凜然的口號,分化港人,製造混亂。

另一方面,我們也不能排除一些可能性,就是國內一些中央部門或地方省市的有關勢力或其代理人,不按《基本法》辦事,伸長雙手,向本港亂"抓"。《基本法》是香港的小憲法,其法理根據源於中國憲法。不單止香港,就是國內各部門處理涉及香港事務,也必須遵從《基本法》。

因此,我們全港市民須提高警傷,團結齊心,積極地參與籌組特區的政府,根據《中英聯合聲明》及《基本法》,落實"一國兩制"、"港人治港"、"高度自治",捍衞我們繁榮安定的成果。

主席先生,本人謹此陳辭,支持葉國謙議員及朱幼麟議員的修正案。

**劉慧卿議員致辭**:主席先生,我發言支持梁耀忠議員的修正案,反對朱幼麟 議員和葉國謙議員的修正案。

對於李柱銘議員的原議案,其實是很難反對的,就好像美國人說母愛與蘋果批是不能反對的一樣。但我相信如果你說到"一國兩制"、"港人治港",中共也會支持,我們親共的議員也會支持,甚麼人都會支持。其實甚麼才算是"一國兩制"、"港人治港"呢?我相信梁耀忠議員在很困難的情況下,嘗試提出了一些準則。如果達不到這些準則,就是沒有"港人治港"、沒有"高度自治",事情就是這樣簡單。那些準則提到政府及立法機關應該由直選產生;須依循國際公約的規定,而我們的司法部門應該擁有對整個《基本法》的最終解釋權。當然,我相信李議員也會記得,《中英聯合聲明》提到我們的終審庭有終審權,但如果這個終審庭連解釋整個《基本法》的權力也沒有時,這個終審權又有何意義呢?因此,我相信梁耀忠議員是幫忙定出了一些境界,但一旦定出了這些境界,便會令辯題具爭論性得多了。如果只說支持"一國兩制",相信鄧小平如果現在坐在這裏,也會表示支持,何須點名表決呢?但如果我們定出一些事情,便可以量度出是否做得到了。

主席先生,今天在很多發言的同事當中,有一位是我最同意的,他提出 的很多意見我都同意,那就是李鵬飛議員,我不是常常同意他的意見的;但 剛才他心平氣和地說出來 一 我們可取錄音帶再聽聽 一 他說的很多 說話我都同意。他說現在很多香港人沒有信心。現在尚餘369日就回歸,他 們不相信香港有自由、不相信香港有法治、不相信香港有民主,這些全是正 確的,我也十分同意。我相信李鵬飛議員看得很通透,他說整件事最終是關 乎"信心"問題,我們是否相信中國政府,但他自己也說出了問題所在,就 是不信。為甚麼不信?就是因為中國政府許下了很多諾言,令我們感到一次 又一次被欺騙 一 我希望你不要中斷我的發言,說我不得說"欺騙", 我是說"欺騙" 一 因為它承諾我們可以"港人治港,高度自治",又 說政府是可以由香港人自己組成。主席先生,你也知道將來的政府是怎樣組 成的。你可能會有分兒,而我則完全沒有分兒,我相信我們五百多六百萬人 都沒有分兒參與,這樣便加諸我們身上。我相信立法局也沒有分兒,周南也 公開說,希望會有超過半數,即是說另一半"凍過水"。由他們透過甄選過 程、政治挑選後組成,而不是由選民挑選的,所以香港人怎會相信有"高度 自治"、"港人治港"呢?

剛才張炳良議員提到鄭家純先生的說話,鄭家純先生是香港最富有的人之一。他在兩星期前回應魯平主任在新加坡的說話。魯平主任說港澳辦將來最主要的工作是擋着某些人,不許他們干預香港。鄭家純先生與其他富翁合資1億元,成立了"香港明天會更好基金",他就是這個基金會的主席。鄭先生當時回應說,魯平主任只得一雙手,又怎能擋着這麼多皇親國戚來港拉關係、謀特權?難道只是有錢人才怕他們干預?我相信連沒有錢的平民都非常害怕,因為這麼多皇親國戚來到時,我們香港人現有的生活方式都會被他們改變。他們害怕將來到政府申請牌照或辦事時,都要拿着很多錢或有關係才可以辦到。主席先生,我相信市民害怕的就是中國政府的干預。剛才朱幼麟議員說,不要因為某些人說了幾句話而擔心,我相信香港人哪會這樣天真。

問題是我們須積極去做,這是我同意的,但我們要積極爭取梁耀忠議員剛才所提出的準則,這些都是很簡單、很基本的準則,我相信也不是全部的準則。如果連這些基本準則也達不到,任何人都只是"空口講白話",徒然說"高度自治"、"港人治港",一旦拿出準則來對照時,就知道那些政策是否落實。因此,只拿有如一杯白開水的議案來說"高度自治,港人治港",我相信不是太有意義,特別是在現階段已是"水浸眼眉",我們還不真真正正說出心裏說話?所以我支持梁議員的意見,甚至可以更"辣"一

些,因為現時有很多人喜歡"騎牆",很多人不愛表態,很多人希望將來還會有前途。其實希望有前途並不是一件壞事,我相信最重要的是市民知道這群想從政的人是否"有腰骨"、有立場、是否有勇氣告訴其他人他相信些甚麼,而不是遮遮掩掩地說一下"高度自治"就可瞞騙其他人。我認為我們立法局的議案辯論最重要是每一次都能令所有人清晰表態,所以我非常支持梁耀忠議員的修正案。他修正得非常好,我甚至認為不夠徹底。如此才能令市民透過這些議案辯論來擦亮他們的眼睛。

現在越多人叫我們實際一些,越多人叫我們不要那麼尖銳發言,我們就 越要這樣做。主席先生,可能你聽得也不大舒服,但我劉慧卿就是心直口直 的人,你也是知道的,我相信的事就會說出來。

我謹此陳辭,支持梁耀忠議員的修正案。

**PRESIDENT**: I think I need to study your speech, Miss LAU. The expressions are meant to reflect on a Member's character.

陳鑑林議員致辭:主席先生,中國政府因應香港的特殊情況,以"一國兩制"的構思解決香港問題。這個極具政治創意的構想在過去十多年來一直牽引着香港600萬人的日常生活,更會延續至九七之後,並引領香港特區政府跨越二零零零年。

可惜社會上某些意見領袖刻意將 "一國"與 "兩制"分割列出來,又或只強調 "一國"而忽視 "兩制";又或只講 "兩制"不理 "一國"。李柱銘議員提出 "一國兩制"背後其中一個重要隱含的意義是內地會有 "干預"傾向,這是對 "一國兩制"的徹底歪曲!基於一個這樣的理解,我們還怎可以期望他有一個準確和理性的演繹呢?

我建議有心真正去理解及認識"一國兩制"的朋友,應該先將"一國兩制"視為一體,加以認識,才能更清晰的了解今天香港人面對的問題。

為甚麼會有"兩制"呢?這就是因為中國政府顧全到需要保持香港原有社會制度中的優良的地方,所以《中英聯合聲明》及《基本法》已清楚把"一國兩制"的具體構思加以條文化。香港回歸後,中央政府將授權香港特別行政區按《基本法》實行"港人治港"、"高度自治"。在《基本法》的保障下,香港人將享有較現時殖民地政府更多的自由及民主。

張文光議員說《基本法》的白紙黑字已化為烏有,越來越褪色。我說不 是。《基本法》在他心中應是越來越黑才對,因為《基本法》已給人描黑了, 給人抹黑了。

中國政府在維護"一國兩制"的方針下是毫無異議的,亦一再向世人承諾這個決心。不過,有些人就專與"一國兩制"為敵,他們到外國進行游說,不負責任地說"一國兩制"及"港人治港"已經名存實亡,而九七年之後的香港,將由受高度控制的傀儡政府控制香港行政、立法及司法機關,不但不可以保護香港人權益,反會剝削港人權利。

今天,李柱銘議員說: "看不清楚九七後"一國兩制"落實的可能, "一國兩制"的前景不單止模糊不清,而且陰雲密佈....."似乎香港的前 景已經危機四伏!

又有人聲稱,中國政府將立法局拆掉不能直通九七,香港的國際金融中 心的地位會受到影響,不再是亞太區內的一個生氣蓬勃的金融中心。

最近,我碰到一些住在加拿大的朋友,我們一見面,他們第一句問的就 是: "新聞無晒自由,港人商人又出賣香港,香港係唔係好唔掂!"。相信 一些與外國有很多交往的朋友,都會有上述的經驗。

這些人出自本身的政治利益,不遺餘力地在外國人面前"唱衰"香港, 目的只是為爭取自己更多的外國支持和政治本錢,香港的長遠利益只是放在 其次。甚至有人說,九七之後如果有需要,他們將到美、加等香港移民較多 的地區募捐經費,留港鬥爭。尋求西方國家干預香港事務,跑到外國面前搖 尾乞憐,散播香港不穩的假象,結果又可以為香港做到些甚麼?

有些人同樣在香港散播危言聳聽的言論,說甚麼九七前中國政府處處干預香港事務,九七後香港民主大倒退,把香港回歸祖國說成是進入另一個殖民地統治。當人們在慶祝香港回歸、洗脫耻辱的時候,他們就高叫"回歸反思"。當日後我們的子孫翻閱今天的歷史時,他們便會發現他們所以能生活在繁榮的社會中,完全是有賴"一國兩制"的安排。當他們發覺他們的長輩們只顧着抹黑"一國兩制"的時候,他們一定會在心中感到非常難過。

主席先生,本人和民建聯希望港人能同心同德,站在同一陣綫走愛國愛港的民主路,維護《聯合聲明》及《基本法》,支持特區的籌備工作,為建設未來而共同努力!我更呼籲600萬港人,由今天開始,想一想如何在這369天內為香港回歸做一件事。我相信,認識"一國兩制",認識《基本法》是一個好開始。

主席先生,雖然一個沒有實質意義的議案辯論正在深夜凌晨時分進行,但最少也可令人明辨是非。我以為會有很多議員在聆聽,不過,看來議員們對歐洲足球賽較李柱銘議員的議案辯論更為有興趣。這或許就是香港的政治文化吧!

本人謹此陳辭,謝謝主席先生。

**詹培忠議員致辭**:主席先生,我們辯論歸辯論,但外面足球比賽捷克已憑12 碼勝出六比五。(眾笑)

**PRESIDENT**: Please speak to the question.

詹培忠議員:在過去五年的立法局會議上,李柱銘議員都有自己的政治議案,而現在他被民主派的議員視為領導者,這是他個人的光榮,也是他個人的成就,他並將香港部分人的利益建立在自己身上。我到外國訪問時,很多人問我,九七年後,李柱銘議員會否離開香港,我的答案是(這已經是我今天第二次提及),如果李柱銘議員真正為香港的事務表達意見,中國政府一香港未來的宗主國一絕對可以容許這種言論,但如果李柱銘議員借助外國勢力,意圖製造另一股力量,對香港人沒有利益,李柱銘議員自己將會得到歷史的教訓。

香港人確實受到傳媒或部分議員的言論所引導,令他們在各方面感到十分不安,但相應來說,我們也須作出檢討,在過往多年來,香港人對中國抱着甚麼態度及心態。中國領導人曾說,希望"河水不犯井水",同時他們也了解到自己的制度是共產黨制度,雖然中國政府將共產黨制度冠上具有中國特色的社會主義的形容字句,但他們了解到自己的制度仍在進步中,或為了適應潮流而在轉變中。香港部分所謂民主派人士也須深切檢討,中國欠你們甚麼嗎?直至現時為止,中國那些所謂不同政見人士,他們對中國領導人或

## 立法局 一 一九九六年六月二十六日

其他方面造成威脅,或持有不同意見而遭受懲罰,但這些畢竟並沒有直接威脅香港人。香港人自從八九年六四事件後,因為太了解事情發展,更受傳媒較為直接的影響。我曾經與中國領導階層提過,中國共產黨在過去46年來,經常發生高層的政治鬥爭,人民也隨着那些政治鬥爭而轉來轉去,遭受到不明朗的政治氣氛影響。如果香港人要了解這點,就必須先了解到中國的領導特色就是如此。

當然,他們會隨着時間而更進步,但實際上,那些所謂民主派人士所抱的是挑剔、惡意中傷,甚至是侮辱的態度。這樣能得到甚麼呢?你們既然有膽量侮辱別人、惡意中傷別人,當別人還擊時,你們卻叫"救命"。我十分欣賞大家成為烈士,你們也是死而無憾的,但你們卻不能帶領普羅大眾市民跟隨你們。他們會有甚麼好處呢?你們可能有一天會成為烈士,最低限度也有一張國旗蓋着走,但普羅大眾市民卻沒有。

因此,我們應該從兩方面來分析這個事實。我每次到外國時,當然不會如李柱銘議員那麼受到歡迎,但例如當我到了溫哥華,當地的"華僑之星"等電台都會訪問我,我當然會就某些事情表達我個人的意見,同時,我也會抱着一個相當持平的心態來分析香港的環境。我認為香港的環境絕對不如大家所看的那麼悲觀。中國政府只想收回一個具有創造性,與中國共同進步的香港,而絕對不願意見到香港是一個包袱。但現時所謂民主派人士的一切言論卻令中國領導人有戒心,因而原想讓"港人治港",但也一定要找聽他們說話的港人治港。因此,這情況並不是自己去爭取的問題,而是採取對抗所得到的結果。你們當中也有為人父母者,如果兒女不斷與父母對抗,做父母的是否會好過?你們當中也有為人師者,如果一名學生雖然聰明,但終日與你們對抗,難道你們會讚他乖,給他100分?當然是不會對他寬容的。

如果有好的意見,中國政府的領導人雖然未必能即時答應,但最低限度 他們是會正式接受的。雖然我沒有資格為現代的中國共產黨說好話,但事實 上它已是十分開明,十分接受善意的批評的了;而惡意的中傷,我相信任何 人都不會接受的。因此,我十分希望香港大部分的市民,應該跟隨立法局的 議員,如果有好的意見,大家應該進行對話。事實上,政治的最高境界,就 是大家多對話、多妥協,最終能共同取得各自的目標,但如果只是終日嘈吵 或對抗,只會造成一種情況,我不妨大膽說一句,就是現時的最大得益者是 英國政府。英國政府在離開時,能令香港人與中國政府直接對抗,而我們大 家得到甚麼呢?

因此,我希望無論是李柱銘議員抑或司徒華議員,大家都能真正為中國的利益着想,拿出你們的理解和耐性,協助中國,尋求大家溝通和對話的渠道,然後提出你們正式的、有建設性的意見。如果只是謾罵或批評中國,希望使香港人的心情混亂,從而獲取益處的話,我認為這種政治不做也罷。

主席先生,我很希望日後大家的辯論都是具建設性的。

**劉漢銓議員致辭**:主席先生,明年七月香港特別行政區政府將會成立,並實施"港人治港及高度自治"。中國政府亦採用"一國兩制"的方針政策,保持港人生活方式五十年不變。每一個香港人理應懷着輕鬆愉快的心情,迎接這歷史性時刻的來臨,但是為甚麼有一些人總是憂心重重,懷疑中國政府未能落實承諾,更恐怕中國政府干預香港內部事務?我認為歸根究柢是一個信心的問題。信心建基於相互了解,了解植根於溝通,溝通避免誤會。多年來很多信心問題都因誤會而起。

我們沒有水晶球預測未來,既然如此,我們懷着憂慮的心情,抱着存疑 及對立的態度,又於事何補呢?倒不如以樂觀積極的行動,合作落實以《基 本法》為基礎的香港特別行政區。

主席先生,多年與中國政府的溝通,使我深信"一國兩制"、"港人治港及高度自治"的方針,是中國政府提出來的,不是英國提出來的。中國政府之一再強調提出用"一國兩制"的方針解決香港問題,不僅是從維護香港的繁榮穩定出發,也是從有利於中國的改革開放和現代化建設出發,而且還是從長遠的中國和平統一的大業出發,因此,全力落實"一國兩制"、"港人治港及高度自治",是中國的既定國策。中國是佔全球人口最多的大國,制定一項重要國策不容易,改變國策則更難,因此,無需擔心中國政府全力落實"一國兩制"、"港人治港及高度自治"的誠意。

主席先生,"一國兩制"、"港人治港及高度自治"的實施,是在九七年七月一日之後,而在此之前,由於特區政府尚未成立,因此,只有中國政府能代表未來的特區政府,與英國政府共同磋商香港跨越"九七"的重大事宜,諸如新機場工程、西北鐵路計劃以及其他大型基建、跨越"九七"的財政預算案等。中國政府已一再重申九七之後,上述事務都屬特區政府的內部事務,中央政府決不會干預。如果有人認為"九七"之前,中國政府代表未來特區政府與英國政府磋商有關跨越"九七"的事宜,就是干預香港內部事務的話,那麼說這種話的人,就將時空與角色都倒轉弄錯了,因為他忽略了"九七"之前是英國負責香港的行政管理,還不是"港人治港",還未曾是香港人高度自治地自行處理自己內部事務的時候。

主席先生,《基本法》對香港"九七"後的民主、法制、人權、自由及 生活方式,都作出了法律上的充分保障。我們珍惜法治精神,因此,要呼籲 香港市民捍衞上述權利,最有效的辦法是呼籲香港市民擁護和捍衞《基本

# 立法局 一 一九九六年六月二十六日

法》,而並不是大聲疾呼一些空洞理念或口號。

港人關心和討論特區的事務,是理所當然的,表達方式可透過林林總總的適當渠道,但是以英國殖民管治下的立法局透過議案提出,則難以避免中國政府視為干預中國主權事務。即使議案獲得通過,只會徒勞無功,我總認為採取與人為善的表達方式最為有效。

時代巨輪,向前邁進。我不禁想起李商隱的一首七絕 "從來繫日乏長繩、水去雲回恨不勝,欲就麻姑買滄海,一杯春露冷如冰。"與其對未來缺乏信心,裹足不前,欲以長繩繫日、留住時光,倒不如加強溝通,積極前進,與港人一起和中國政府共同合作,求同存異,以《基本法》為基礎,協助籌委會建設一個美好的特區。

主席先生,本人謹此陳辭。

**司徒華議員致辭**:主席先生,我首先要回應詹培忠議員,我沒有叫過"救命"。

剛才有人提醒我們,說以前曾有人鼓吹以主權換治權,我想一想,是誰曾這樣鼓吹呢;那些人現在身在何處呢?我找了又找,好像在籌委會中找到了,他現在變成了愛國人士。

剛才有人提到周南說,希望將來的臨時立法會有一半人是現時立法局內的人。是否周南說說便會是真的呢?他說有一半人會是,那麼就應解釋為何另一半人不是。很多人說臨時立法會是選舉產生的,現在連推選委員會還未成立,便已提到這些。不是手伸得過長,而是舌頭伸得太長吧!

剛才在會議中途,有一名報館記者傳呼給我,我覆電話給他問甚麼事,原來有消息說今天籌委會開會決定,香港剛通過的一條法例,簽署定於九七年七月一日生效是不可以的。我問是哪一條法例,原來是關於佩戴安全帶的法例!為何佩戴安全帶的法例在九七年七月一日生效是不可以的呢?這是否涉及國防與外交呢?抑或過渡實在太平穩了,佩戴安全帶是諷刺不能平穩過渡?這些雖然是小事,但卻反映出"一國兩制"、"高度自治"能否實現。

剛才又有人提到,現時是平穩過渡,目前還未出現投奔怒海的情況。莫 非真想現在出現投奔怒海嗎? 有些人說我們"唱衰"香港的前途,但這實在是不易"唱"的。在加拿大每朝清晨八時可收看前一晚香港的電視節目;不論是溫哥華抑或多倫多,都有兩個廣東話廣播的電台和電視台;他們每天都可以買到六份以中文出版的報章,其中大部分都會報道香港新聞。並非任何一、兩個人說說,便可以完全代替他們用自己的眼、自己的耳所知道的香港事情。沒有人有這麼大的神通本領,只是事不離實而已。事實上,他們跟香港仍有非常密切的關係。

剛才有人說,他遇到加拿大的朋友,聊下來覺得他的朋友對香港的情況 並不了解,其實他的朋友比他更了解香港的情況,他自己反而是視而不見、 聽而不聞。

主席先生,我謹此陳辭,支持李柱銘議員的議案。

**楊森議員致辭**:主席先生,剛才顏錦全議員引用孔子的說話,說做一個智、 仁、勇的人便不惑、不憂、不懼。其實面對九七,我也希望能不困惑,但現 實是否能令我們不困惑呢?

我們立法局通過《人權法》,之後隨着各方面的努力,根據《人權法》 修改了許多殖民地的法例,它們很多是困擾和打擊人權自由、新聞自由、廣 播自由等的法例,現在籌委會卻說要還原惡法,試問在座各位,對這些人權 保障受到這麼大的沖擊,會否對人權的保障表示困惑呢?

我也想對前途不憂,做一個開心的人,但可以嗎?九五年產生的立法 局這麼受市民支持,但竟然在中方一聲的"三違反"之下便完全解體,代之 而起的是一個完全沒有經過民主選舉而產生的臨時立法會,這難道不是一個 民主大倒退嗎?如果說不是民主大倒退,難道是民主前進嗎?如果是這樣的 話,我想說這說話的人的邏輯真是頗有問題。

我也想對前途不恐懼,但當魯平先生提到新聞自由時,第一句說甚麼都可以講,但第二句便說完全不能提台灣獨立,因為這違反了"一國"原則,即提到兩個中國的問題;他又表示"報道"可以,但"鼓吹"便不可以,我可給他弄糊塗了,原來"鼓吹"和"報道"在法律上是這麼不同的。對於這樣的新聞自由,大家是否完全不恐懼呢?

因此,我認為大家不要做一隻駝鳥,將頭埋在沙堆。我也不會因對前 途擔心而放棄。我希望大家明白,我們是要反映港人的憂慮。我們不會載歌

## 立法局 一 一九九六年六月二十六日

載舞地去迎接九七,我們會有一個反思,會將香港人的憂慮表達出來,因為香港人的人權、自由和民主確實受了很大的沖擊。香港的"高度自治"也受到中方多方面的干預,可謂"無微不至",這是事實。對於這個事實,我們絕不會退縮,我們會繼續留在香港面向這挑戰,為香港爭取"港人治港","高度自治",盡力做我們所能做的事。因為如果香港在中國主權下能夠實現"一個兩制"、"高度自治",不單止對香港很重要,對整個中國的發展也很重要。我們切勿因為目前的困難或將來要面對的困境而灰心。我覺得一定要挺起胸膛,做個能抬得起頭的中國人,在香港站穩我們的崗位,在中國主權下爭取"港人治港"、"高度自治"。

有人提到"愛國愛港",其實在中英草簽時我們這群民主派人士已站出來支持中國收回香港的主權,所以我們是支持回歸的。在這回歸的問題上,我們認為殖民地主義或歷史到了當結束的時候便要結束。我們支持中國收回主權,我們並不認為殖民地的歷史要繼續延展下去。但"愛國"並不等於"愛黨",我們不可以因為共產黨所作的事,我們對它批評而它不喜歡,我們便不敢說,噤若寒蟬。這樣做你們認為可算是"愛黨"嗎?這樣做反而是害了國家。這是愛人民嗎?實在反而是害了人民。我認為"愛國愛港"應從這角度去演繹,不要為了黨或個人利益而盲目地擁護一個黨,無論它作了甚麼事,我們都不敢批評它。我覺得這樣是違背公義的,也不是"愛國"的基本精神。

謝謝主席先生。

李永達議員致辭:劉漢銓議員在談及前途問題時提到溝通,他覺得溝通是一個更容易解決問題的方法。理論上這是正確的,沒有人不同意,但問題是怎樣溝通和有否做到溝通。上星期日,香港政策透視就有關籌委會的公信力進行了一項調查,結果是有50%以上的人對籌委會的信任程度是零。雖然我們以前的同事譚耀宗先生迴避回答這問題,他說這方面的事不好說,即不需要說,但我認為這卻是要說的。這不是民主黨給籌委會的分數,而是一個組織透過科學調查,給一群現正處理香港過渡事務、中國政府委任的分數數。他們自己應冷靜想想,其中有14位是我們的同事,也有一些是以前曾與我們工作的,亦有些是相對地較為開明的,為何香港市民給他們的公信力的評分較預委會還低?是否他們工作不積極、不透明、不主動?如果中國政府或籌委每次看到市民和新聞界對他們的批評,便說這些是彭定康、民主派"抹黑"他們,這無疑是一個故步自封的結論,永遠把一些批評當作是幻想的敵人陰影、陰謀,每天便向着這些幻想的敵人陰影去打擊他們,結果是打不着。

剛才劉漢銓議員所說的問題是,中國政府是代表未來特區政府或特區人民與英國政府商討過渡問題。我時常都懷疑這句話,因為我也懷疑,中國共產黨作為中國政府在實權上是政府,但在人民的授權上,我不知是否同意它是政府。我從來未聽過共產黨現在執政的政府是透過人民普選或民主選舉的過程產生。是否真的全國人民都支持,我並不知道。如果在進行了一次選舉後,有這樣的結果,可能我也會"舉腳"贊成這是事實。因此,這事實在邏輯上來說,在香港也是應用不到的。香港市民可能在政治現實上,覺得我們回歸祖國,它是我們未來宗主國的中央政府,但它現在所提出的言論,是否代表香港市民的看法呢?這是要透過市民意見的表達和科學的民意調查才可以看到。因此,有關這點,我並不太同意劉議員的看法。

剛才陳鑑林議員說民主黨或民主派的人很喜歡向外國人搖尾乞憐,我真的不知是誰喜歡搖尾乞憐。這一陣子,港澳辦主任魯平接受西方傳媒的訪問,這情形在這麼多年來是非常少見的;周南先生又接受《時代周刊》的訪問,但這兩位先生在港卻不太喜歡接受本地報章和新聞媒介的訪問。不知周南先生和魯平主任是否特別喜歡向外國人宣傳一些信息呢?陳鑑林議員是否覺得周南先生和魯平主任向外國搖尾乞憐呢?將一些與外國接觸,談論香港問題的做法,說成是向外國搖尾乞憐,這說法是否已歪曲了事實呢?香港的事,是否可以被"唱衰"的呢?這也是等於說,香港的事,是否可以被"唱衰"的呢?這也是等於說,香港的事,是否可以被"唱"得好的呢?

沒有人制止中國政府每天派一百、一千、甚至一萬名使者到美國、加拿大和日本宣傳中國的好處;但好處不是單靠宣傳就可以得來的。有這樣想法的人便是接受了共產黨的習慣:人民只是封閉的,沒有政治信息的自由,沒有資訊的自由,所以宣傳可以是宣傳好的,也可以是宣傳壞的。這便是過於受到共產黨日以繼夜的奴化教育所教導出來的思想看法。如果事情是好的,想宣傳它是壞,並不是很容易;如果事情是不好的,想宣傳它是非常好的,在一個自由社會裏也不是太容易,所以我希望這些同事不要時常以為民主派"抹黑"中國。

我有時也不明白,為何民主派會有這麼大的力量,即等於我不明白中國政府為何那麼懼怕那些民運人士,他們加起來也不足20個。以20個民運人士,以及即使香港有數百名民主派人士,便可攪出這麼多事情,他們豈非全是神童、神女俠、神男俠,全部都是神仙?我不太明白為何這些人會有這麼大的力量,令一個擁有4 000萬黨員,又擁有軍隊的政府那麼害怕。我們沒有槍,唯一只有一張咀,說出事實,說出人民的聲言。

在回歸前三百多天,我跟楊森議員的看法相同,很有感觸。很多人時常 將國家、民族、黨和人民的利益混為一談。我愛我自己的國家,我愛我的同 胞,但我不愛共產黨。為何我一定要愛共產黨?這個黨不是人民授權成為政 府的;這個黨看到要求民主的人便要拘禁;這個黨只喜歡聽好說話,不愛聽 不好的說話,為何我們一定要愛它呢?為何要將這個黨的利益等同全國人 民、全國同胞或中華民族的長遠利益呢?我從來看不到這個邏輯。唯一的邏 輯是這些人所做的是屈服於政治現實,不去思考問題,將現實說成理想。因 此,對於中國共產黨代表全中國人民的利益,以及全中華民族的長遠利益這 點,我是百分之百不同意的。

謝謝主席先生。

陳鑑林議員:主席先生,李永達議員剛才曾提及我,說我曾提及民主黨或民主派的事。事實上,在我的演辭中,我從來沒有提及民主黨和民主派,所以 我希望可以作出澄清。

**PRESIDENT**: Mr CHAN Kam-lam, is it a point of order or a point of elucidation?

陳鑑林議員:我希望能澄清這點。

**PRESIDENT**: Mr CHAN Kam-lam, are you trying to explain the point that was misunderstood by Mr LEE Wing-tat. You have my permission to do so; simply explain it and not making a speech as a rebuttal to what Mr LEE said. Explain that part which has been misunderstood.

謝謝主席先生。

**PRESIDENT**: Did you refer to the Democratic Party or the democrats in your speech?

陳鑑林議員:主席先生,我的演辭中並沒有提及民主黨或民主派。

李柱銘議員致辭:主席先生,因為有三項修正案,所以五分鐘時間其實是不足夠的,不過,我會盡快的。

有些議員既支持我的原議案,又支持葉國謙議員的修正案,令我十分費解,所以剛才我走出去,不是上洗手間或看足球比賽,而是去問清楚民協的朋友們究竟我有否聽錯,但他們卻說沒有,他們說修正案只是刪去了原議案少許內容。我希望他們看清楚,是總共刪去了兩句,一句是"及不要干預香港內部事務",即如果支持葉國謙議員的話,是刪除了這句;而另一句是"捍衞香港民主、法治、人權自由及生活方式"。如果民協的朋友們認為這句話不好,可贊成刪去,但請不要說支持我的原議案,倒不如乾脆只支持葉國謙議員的修正案,不要支持我的議案。因為如果刪去了這兩句說話,已經不是我的議案了。我希望大家看清楚,不要以為只是刪去了少許,這可經不是我的議案了。我希望大家看清楚,不要以為只是刪去了少許,這不是"少許",而是兩句重要的話,而我的議案也不是很長。還有一點令人費解的,就是羅祥國議員發言時很激動,說中國政府根本就是直接和間接地干預香港,我同意這點,也即是我議案那句話,可是民協又同意葉國謙議員刪去我這句,所以我希望羅祥國議員能盡快跟民協其他議員商量,達成協議,在表決時支持我。

我相信陳鑑林議員是既支持葉國謙議員的修正案,也支持朱幼麟議員的修正案。他因為我說了一句"內地會有干預的傾向"而不高興。但其實最近首先說這句話的並不是我,而是魯平先生,因為魯平先生曾說他們的手不要伸得那麼長,我是聽得很清楚的;而鄭家純先生既不是民主派,也不是民主黨,他還說魯平先生怎能擋着那麼多雙手。更奇怪的是,如果大家看看朱幼麟議員的修正案,他刪去了我議案中的很多字句,但卻加上一句:"歡迎中國政府近日透過國務院港澳辦公室主任作出保證,表示會阻止任何中央或省政府部門干預香港的內部事務"。我覺得這句很好,朱幼麟議員這句話說得很好。因此,我希望民建聯的朋友又要想清楚,如果你們不喜歡我那句說話,那麼你們便不應支持朱幼麟議員這句說話。我只不過是說出邏輯,希望大家能看清楚和想清楚。我知道大家會比較混亂,因為那些修正案修改這、

修改那的,但又不是整個議案列出來,只是就原議案增增刪刪,有時候並不 看得清楚整句句子,所以我希望大家細心看,事實上,我也花了很多時間看 各項修正案。

現在讓我說說梁耀忠議員的修正案,陸恭蕙議員說得對,她說她不很明白究竟梁耀忠議員想做甚麼,其實我可以告訴她,梁耀忠議員實際真的是想修改《基本法》,可是下星期三楊森議員會提出修改《基本法》的議案,而我們的主席又這麼英明,如果說要修改《基本法》,他一定請議員留待下星期三。因此,梁議員話到咀邊也只得吞回肚裏,所以是很不清晰的。有議員認為我的議案很淡,像白開水一般,不夠"辣",可惜那位議員發言得早,如果是遲一些才發言的話,她就會聽到陳鑑林議員對我這項"唔湯唔水"或有如"白開水"般的議案作出嚴重攻擊,詹培忠議員也有參與,所以其實證明了我李柱銘素來都是"持平"的。(眾笑)

為甚麼我們不能支持梁耀忠議員的修正案呢?為甚麼我們要投棄權票呢?因為其實我的議案就好像一幅黑白的畫,是完整的一幅畫,而梁耀忠議員就要加上顏色。本來我也頗喜歡色彩,但他卻只在少許部分畫上顏色,大部分卻沒有顏色,所以這幅畫部分有顏色,部分沒有顏色;因為他不喜歡我大筆畫的那些,他加上了一些細節,但所加的細節卻不很全面,所以經修改的這幅畫十分難看。我們民主黨昨天在吃午飯時曾進行了討論,我們並不會反對他的修正案,因為根本他提出的很多建議都是以前我們曾經提出的,於是我們只能夠棄權。

主席先生,我也有點奇怪,我竟然能夠在這麼短的時間內說完我對各項 修正案的意見。

謝謝主席先生。

**PRESIDENT:** I hope it does not reflect all the time you have lost in court. (*Laughter*)

**憲制事務司致辭**:主席先生,我也不知道怎樣去整理自己的演辭,因為正如李柱銘議員所說,其實今天的辯論和各項修正案所提的論點都非常混亂。 (眾笑)我想了很久之後,也很擔心你會認為我離題。結果我決定依照最初的原稿,作出少許修改,作為一個綜合。

"一國兩制"、"港人治港"和"高度自治"是《中英聯合聲明》的既

定原則,而貫徹執行這些原則,對確保香港繼續繁榮安定非常重要。《中英聯合聲明》和《基本法》所作的承諾和保證,各位議員都熟悉不過,而中英兩國政府均有責任恪守這些原則,亦是眾所周知。

雖然如此,如果要維持這些原則,還須進行許多具體的工作。香港今天的成就建基於三大因素:法治、一流的經濟基礎建設和對個人權利與自由的尊重。為維持和鞏固這些成功因素,我們自一九八四年起已做了不少工作。 我想簡單舉出三個例子:

- (a) 法治方面,中英雙方已同意成立終審法院,以確保香港的司法制度得以延續。此外,我們在立法方面也大有進展,現已完成英國法例本地化計劃的三分二工作。至於在國際法的層面,我們亦頗有成績。香港正與多個國家就法律和司法事宜磋商簽訂一系列可在一九九七年六月三十日後繼續適用的雙邊協定。
- (b) 經濟方面,為鞏固現有基礎,中英雙方同意香港加入主要的國際金融、貿易和經濟組織,並與第三國家商訂多項投資保護協定。此外,雙方還在新機場的財務安排上,包括最近擬建的第二條跑道工程,達成協議。另一方面,我們亦就一九九七年後適用於香港的知識產權規管架構,取得共識。
- (c) 至於保障個人權利和自由方面,中英雙方同意多條人權多邊條約, 在一九九七年六月三十日後可繼續生效,而《中英聯合聲明》和《基本法》也規定《經濟、社會與文化權利國際公約》和《公民權利和政治權利國際公約》將繼續適用於香港。

上述種種成果,有一些因為得到新聞界以頭條方式報道,已廣為人知;亦有一些較瑣碎,並未引人注目,但無論如何,這些準備工作對順利過渡同樣重要。不過,我們雖然已取得不少成果,但仍有一些事項尚待解決,包括大家都非常關注的居留權問題、法律適應化機制、民用航空運輸協定方面的問題等。時間當然是越來越緊迫,但我們始終有信心,只要雙方願意合作,這些問題定能及時解決。

當然,我們和中方之間尚有一點基本的分歧,就是對立法機構未來安排的看法。關於這個問題,英國政府和香港政府的立場非常明確。在昨天會議開始時,布政司也就這問題詳細闡述香港政府的立場。我們定會繼續把握機

## 立法局 一 一九九六年六月二十六日

會,向中國領導人申明我們在這方面的看法。

有些人可能很想知道香港的前景和他們的未來。事實上,《中英聯合聲明》已規定香港未來50年的發展路向。英國政府和香港政府堅決承諾,會盡心竭力執行《中英聯合聲明》的一切規定。英國首相曾明確表示,英國在一九九七年後會繼續關注香港的發展,並會承擔對香港的義務。

至於中國領導人也在不少場合中,重申對履行《中英聯合聲明》的承諾。中國總理李鵬在三月全國人民代表大會上,重申中國政府會全面落實"一國兩制"的原則,而香港也會享有高度自治權。中國國家主席江澤民在一月與英國外相會面時,也保證恪守《中英聯合聲明》所作的承諾,一九九七年前如是,一九九七年後亦如是。

落實《中英聯合聲明》是歷史重任。香港能否順利過渡,固然有賴中英雙方的合作,但正如剛才數位議員所說,香港市民亦擔當重要的角色。事實上,香港人比誰都能主宰香港的前途和他們本身的命運。香港能夠創造經濟奇蹟,發放異彩,主要是由於香港人擁有頑強的毅力和沖天的幹勁,並積極維護他們倚信的價值標準,包括法治、廉潔而負責的政府、公平競爭和個人自由。而我堅信,只要按照"一國兩制"、"港人治港"和"高度自治"的原則共同努力,香港人 一 我們大家 一 一定能夠繼往開來,在二十一世紀繼續創造驕人的成績。

**PRESIDENT**: I now call upon Mr IP Kwok-him to move his amendment to the motion.

#### MR IP KWOK-HIM's amendment to MR MARTIN LEE's motion:

"刪除"本局促請中國政府全力",並以"為順利建立香港特別行政區,"取代;刪除"及不要干預香港內部事務;",並以","取代;刪除"本局並呼籲"中的"並";及刪除"捍衞香港民主、法治、人權、自由及生活方式",並以"團結齊心,維護《中英聯合聲明》和《基本法》,支持特別行政區籌備委員會的工作"取代。"

**葉國謙議員致辭**:主席先生,我動議修正李柱銘議員的議案,修正案內容一如議事程序表內於我名下所載。

## LEGISLATIVE COUNCIL — 26 June 1996

# 立法局 一 一九九六年六月二十六日

Question on Mr IP Kwok-kim's amendment put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr IP Kwok-him claimed a division.

**PRESIDENT**: Council shall now proceed to a division.

**PRESIDENT**: Members may wish to be reminded that they are now called upon to vote on the question that the amendment moved by Mr IP Kwok-him be made to Mr Martin LEE's motion. Would Members please register their presence by pressing the top button and then proceed to vote by choosing one of three buttons below?

**PRESIDENT**: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr

278

Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 28 votes in favour of the amendment and 26 votes against it. He therefore declared that the amendment was carried.

**PRESIDENT**: Mr David CHU, as Mr IP's amendment has been agreed, I understand that you do not wish to proceed with your amendment.

**MR DAVID CHU**: Mr President, I would like to withdraw my amendment to the motion.

**PRESIDENT**: Mr LEUNG Yiu-chung, now that Mr IP's amendment has been agreed, I understand you have indicated earlier that you do not wish to proceed with your amendment.

梁耀忠議員:主席先生,我想撤回就此項議案動議的修正案。

**PRESIDENT**: Mr Martin LEE, you are now entitled to your final reply and you have six minutes out of your original 15 minutes.

李柱銘議員致辭:主席先生,我現在正等待民主黨其他議員告訴我應該支持還是反對這項修正案,因為這項修正案已經將我的議案內兩句很重要的說話修改了。因此,主席先生,民主黨覺得我們是不能支持這項修正案的。

主席先生,我想談一談幾點。李鵬飛議員提到為何現在沒有了"直通車",我想作出簡單的回應。當然,中國政府會說,因為英國政府或彭定康在未得中國政府的同意下,擅自修改選舉法,但我們有否嘗試想想為何要成

立臨時立法會呢?答案是因為要修改選舉法。如果不成立一個臨時立法會,便不可以修改選舉法。姑勿論這是否正確,我們不作爭辯,就當作是彭定康"三違反",就當作臨時立法會一定要成立,但為何要這麼長時間呢?有沒有想過這點呢?有些人說會成立一年,但魯平先生說在一九九八年年底才舉行選舉。我們也不知道臨時立法會何時成立,很可能是在九七年七月一日之前,即總共可能是為期兩年。有沒有人想過,即使有這需要,為何不可以現時便開始草擬修訂條例草案?還有一年時間。一九九七年七月一日和二日是假期,七月三日是星期四,要上班,如果推選委員會還未選出臨時立法會的人選,那天才選出也不算遲。接着是星期五,經修訂的法案可以刊登憲報。七月九日是星期三,他們可以舉行會議,一天三讀通過經修訂的選舉法方案。為何不可以舉行選舉呢?沒有人提到。不知籌委是否因為一聽到魯平先生說一定要成立、米已成炊,便沒有人再嘗試考慮這些問題。

主席先生,我並不贊成成立臨時立法會,我們的立場已很清楚。臨時立法會一旦成立,我一定會到高等法院提出起訴。不過,即使要成立,為何沒有人想一想為何不可以讓我們的市民選舉,即使是依據中國政府認為正確的選舉法,為何不可以讓香港的市民依著這些經修訂的選舉法來選出他們自己的立法局議員呢?把責任推卸給彭定康是一個太容易的藉口。我不是支持英國政府,所以那場足球比賽我沒有下注於任何一隊,現在比賽正在進行中。

朱幼麟議員的論據其實連他自己也分辨不到一件事,便是壓迫者和被壓 迫者的關係。朱幼麟議員的含意,是被壓迫者要與壓迫者團結一致來做事, 這當然好,當然和平,但香港市民是否得到自由和人權的保障呢?

為何我們那麼不喜歡葉國謙議員的修正案呢?其實修正案在字面上並不是太過分,但其含意卻可看到一個假設,便是中國政府一直在根據《聯合聲明》辦事,如果它一直根據《聯合聲明》辦事的話,根本我也不會提出這項議案。如果中國政府由始至終都尊重香港人,信賴香港人,一直讓香港人管理自己的內政,給我們高度自治,現在香港人又怎會有這無奈的感覺呢?因此,如果這項議案是在八五、八六年時提出,我一定會支持。不過,我們不能夠忘記這十多年所發生的事,特別是最近這六個月所發生的事 一 閹割《人權法》、還原惡法、以一個其實是委任制度產生的臨時立法會代替一個由民選產生的立法局。我們怎可以當這些事情沒有發生呢?

因此,我希望民主派的議員三思 — 如果你們覺得自己是民主派議員的話 — 希望你們反對這項修正案。

謝謝主席先生。

Question on the motion as amended by Mr IP Kwok-him put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr CHAN Kam-lam and Mr TSANG Kin-shing claimed a division.

**PRESIDENT**: Council shall proceed to a division.

**PRESIDENT**: I would like to remind Members that they are now called upon to vote on the question that the motion moved by Mr Martin LEE as amended by Mr IP Kwok-him be approved. Would Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

**PRESIDENT**: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the amended motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr

Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE PRESIDENT announced that there were 28 votes in favour of the amended motion and 26 votes against it. He therefore declared that the amended motion was carried.

#### ADJOURNMENT AND NEXT SITTING

**PRESIDENT**: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 3 July 1996.

Adjourned accordingly at twelve minutes to Three o'clock.